

COUNCIL ORDINANCE No. 2246

AN ORDINANCE OF THE CITY OF MILWAUKIE, OREGON, AMENDING MUNICIPAL CODE (MMC) CHAPTERS 13.14 STORMWATER MANAGEMENT AND 16.28 EROSION CONTROL BY ADDING REQUIREMENTS RELATED TO ESCALATING ENFORCEMENT.

WHEREAS the city is required by federal law to have an approved National Pollutant Discharge Elimination System (NPDES) Municipal Separate Storm Sewer System (MS4) Phase 1 Discharge Permit for its municipal storm sewer system; and

WHEREAS the city is required by the 2021 NPDES Permit to adopt, update, and maintain adequate legal authority to control pollutant discharges into and discharges from its MS4 and to implement and enforce the conditions of this permit, to the extent allowable pursuant to the respective authority granted under state law; and

WHEREAS compliance with the NPDES Permit requires the city to establish a written escalating enforcement and response procedure for all qualifying construction sites for construction site runoff control.

Now, Therefore, the City of Milwaukie does ordain as follows:

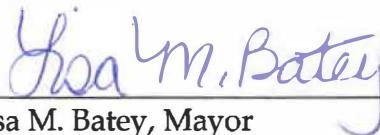
Section 1. Amendments. The Milwaukie Municipal Code (MMC) Chapter 13.14 Stormwater Management and Chapter 16.28 Erosion Control are amended as described in Exhibit A (underline/strikeout version) and Exhibit B (clean version).

Section 2. Effective Date. This ordinance will become effective on December 19, 2024.

Read the first time on **11/19/24** and moved to second reading by **5:0** vote of the City Council.

Read the second time and adopted by the City Council on **11/19/24**.

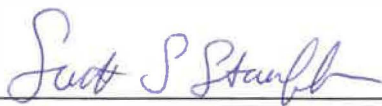
Signed by the Mayor on **11/19/24**.



Lisa M. Batey, Mayor

ATTEST:

APPROVED AS TO FORM:



Scott S. Stauffer, City Recorder



Justin D. Gericke, City Attorney

Exhibit A

CHAPTER 13.14 STORMWATER MANAGEMENT

§ 13.14.010. PURPOSE.

The City finds and declares that absent effective maintenance, operation, regulation, and control, existing stormwater drainage conditions in all drainage basins and subbasins within the City constitute a potential hazard to the health, safety, and general welfare of the City. The City Council further finds that nature-based and manmade stormwater facilities and conveyances together constitute a stormwater system and that the effective regulation and control of stormwater can best be accomplished through formation, by the City, of a stormwater utility.

(Ord. 1755 § 6, 1994; Ord. 2013 § 1, 2010; Ord. 2223 § 1, 2022)

§ 13.14.020. DEFINITIONS.

“Best Management Practices (BMPs)” means schedules of activities, prohibition of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the state. BMPs are also treatment requirements, operating procedures, and practices to control runoff, spillage, or leaks, sludge, or waste disposal, or drainage from raw material storages.

“Chronic Illicit Discharges” means continuous or repeated illicit discharges to a Municipal Separate Storm Sewer System (MS4), potentially resulting from sanitary/wastewater connections to an MS4, sanitary/wastewater inflows into an MS4, unpermitted industrial wastewater discharges to the MS4, or other types of illegal dumping or poor housekeeping practices upstream from an outfall where irregular flows, color, smell, or other monitoring parameters indicate an issue that may need repeat investigations over time to ensure cross connections or illegal dumping are remedied. Chronic illicit discharges may not be long-term and ongoing as in the case of illicit connections that can be stopped easily. Chronic illicit discharges may be defined by inconclusive findings of outfall investigations indicating pollutant discharge or repeated reports by members of the public that have not been traced back to a definite source.

"City" means the City of Milwaukie, a municipality, and its authorized employees.

"City council" means the City Council of Milwaukie.

"Customer" means a person in whose name service is rendered as evidenced by the signature on the application/contract for stormwater, sanitary sewer, or water service or, in the absence of a signed instrument, by the receipt and payment of bills regularly issued in their name.

"Developed" means an area ~~that~~^{which} has been altered by grading or filling of the ground surface, or by construction of any improvement or other impervious surface area, which affects the hydraulic properties of the location.

“Discharge” means any addition of any pollutant or combination of pollutants to waters of the state from any point source, or any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft ~~which~~^{that} is being used as a means of transportation. This definition includes additions of pollutants into waters of the state from surface runoff, which is collected or channeled by humans; discharges through pipes, sewers, or other conveyances owned by a State, municipality, or other person, which do not lead to a treatment works; and discharges through

pipes, sewers, or other conveyances, leading into privately owned treatment works.

"Equivalent service unit (ESU)" means a configuration of development or impervious surface estimated to contribute an amount of runoff to the City's stormwater system ~~which~~ ~~that~~ is approximately equal to that created by the average developed single-family residence within Milwaukie. One ESU is equal to 2,706 square feet of impervious surface area.

"Illicit Discharge" means any discharge to the City's storm sewer system that is not composed entirely of stormwater, except discharges permitted by a National Pollutant Discharge Elimination System (NPDES) permit or other state or federal permit, or otherwise authorized.

"Impervious surface" means any surface resulting from activities that prevents the infiltration of water or results in more runoff than in undeveloped conditions. Common ~~that hard surface area~~ which either prevents or retards the entry of water into the soil mantle and/or causes water to run off the surface in greater quantities or at an increased rate of flow from that present under natural conditions. Impervious ~~impervious~~ surfaces may include, but are not limited to, building rooftops, roofs, traditional concrete, or asphalt paving on, walkways, patios, driveways, parking lots, gravel lots and roads, and packed earthen material, or storage areas, trafficked gravel, and oiled, macadam, or other surfaces which similarly impede the natural infiltration or runoff of stormwater.

"Improved premises" means any area ~~which~~ ~~that~~ the ~~Public Works Director~~ Manager determines has been altered such that the runoff from the site is greater than that which could historically have been expected. Improved premises do not include public roads under the jurisdiction of the City, County, State or federal government.

"Manager" means the City Manager or designee ~~of the City stormwater management system.~~

Municipal Separate Storm Sewer System (MS4) means a conveyance or system of conveyance, including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains that are (i) owned or operated by a State, city, town, county, , or other public body having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, that is (ii) designed or used for collecting or conveying stormwater (iii) ~~which~~ that is not a combined sewer; and (iv) ~~which~~ that is not part of a Publicly Owned Treatment Works as defined at 40 CFR §122.2.

"National Pollutant Discharge Elimination System (NPDES)" means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring, and enforcing permits, and imposing and enforcing pretreatment requirements, under sections 307, 402, 318, and 405 of Clean Water Act [40 CFR §122.2].

"One- or two-family residential" means an area ~~which~~ ~~that~~ is improved with one or two attached single-family dwelling units for occupancy each by a single family or a similar group of people, provided each dwelling has a separate billing within the City's utility billing system.

"On-site mitigation control system" means a stormwater drainage facility ~~that~~ ~~which~~ ~~the Public Works Director~~ ~~has determined~~ prevents the discharge, or substantially reduces the discharge, of stormwater or nonpoint source pollution into a receiving water or public stormwater system facility.

"Person responsible" means the occupant, lessee, tenant, contract purchaser, owner, agent, or other person having possession of property, or if no person is in possession, then the person in control of the use of the property, or in control of the supervision of development on the property.

"Point Source" means a discernible, confined, and discrete conveyance including, but not limited to, a pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock,

concentrated animal feeding operation, vessel or other floating craft, or leachate collection system from which pollutants are or may be discharged. Point source does not include agricultural storm water discharges and return flows from irrigated agriculture.

“Pollutant” means dredged spoil; solid waste; incinerator residue; sewage; garbage; sewerage sludge; munitions; chemical wastes; biological materials; radioactive materials; heat; wrecked or discarded equipment; rock; sand; cellar dirt; and industrial, municipal, and agricultural waste discharged into water.

"Public works standards" mean the City of Milwaukie Public Works Standards ~~and the referenced City of Portland Stormwater Management Manual~~ that the City requires be complied with for the design and construction of on-site mitigation facilities including stormwater detention, retention, and water quality treatment facilities.

"Stormwater" means ~~water from that portion of precipitation that does not naturally percolate into the ground or evaporate, but flows via overland flow, interflow, channels, or pipes into a defined surface water channel or a constructed stormwater control infiltration facility, surface or subterranean water from any source, drainage, and nonseptic wastewater.~~

"Stormwater service" means the operations of the City's stormwater utility in providing programs and facilities for maintaining, improving, regulating, collecting, and managing stormwater quantity and quality within the City's service area.

"Stormwater system" means any manmade or nature-based structure or configuration of ground that is used or by its location becomes a place where stormwater flows or is accumulated, including, but not limited to, pipes, sewers, curbs, gutters, manholes, catch basins, ponds, creeks, underground injection control (UIC) facilities, open drainageways, rain gardens, vegetated swales, permeable pavement, green roofs, urban forest canopy, tree trenches, rainwater harvesting, green streets and their appurtenances. Stormwater system does not include the Willamette River.

"Street wash water" means water that originates from publicly financed street cleaning activities consistent with the City's National Pollutant Discharge Elimination System (NPDES) municipal stormwater permit.

"Toxic substances" mean any chemical listed as toxic under Section 307(a)(1) of the Federal Clean Water Act (CWA) or Section 313 of Title III of Superfund Amendments and Reauthorization Act (SARA).

"Undeveloped" means any area ~~which that~~ has not been altered by grading or filling of the ground surface, or by construction of any improvements or other impervious surface area, which affects the hydraulic properties of the location.

"Waters of the state" means lakes, bays, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Pacific Ocean within the territorial limits of the State of Oregon, and all other bodies of surface or underground waters, natural or artificial, inland or coastal, fresh or salt, public or private (except those private waters that do not combine or effect a junction with natural surface or underground waters) that are located wholly or partially within or bordering the state or within its jurisdiction.

(Ord. 1755 § 6, 1994; Ord. 2013 § 1, 2010; Ord. 2223 § 1, 2022)

§ 13.14.025. REGULATIONS AND REQUIREMENTS.

A. Compliance with ~~Industrial~~-NPDES Stormwater Permits

Any ~~industrial person or entity responsible for any discharged discharger, discharger associated with construction activity, or other discharger~~ subject to any NPDES permit issued by the Oregon DEQ, from which pollutants may enter the public or private stormwater system, shall

must comply with all provisions of such permits, including notification to and cooperation with local entities as required by federal regulations. Proof of compliance with said permits may be required in a form acceptable to the Manager ~~of the City stormwater management system~~ prior to issuance of any grading, building, or occupancy permits or business license.

B. Compliance with State, Local, and Federal Regulations

All users of the public stormwater system, and any person or entity whose actions may affect the system, ~~shall~~ must comply with all applicable federal, State, and local laws, including Section

19.402 Natural Resources. Compliance with the requirements of this chapter ~~shall~~ in no way substitutes for, or eliminates the necessity for compliance with, applicable federal, State, and local laws.

C. Stormwater Management Document

The Manager ~~must~~ will administer this Chapter 13.14 and may furnish additional policy, criteria, and information, including specifications and procedures for implementing the requirements of this chapter. In the event of a discrepancy between the requirements of any stormwater management document and the code, the requirement that is most protective of water quality overrides all other requirements.

D. Conflicts with Existing and Future Regulatory Requirements of Other Agencies

Any provisions or limitations of this chapter, and any rules adopted pursuant hereto, are superseded and supplemented by any applicable federal, State, or local requirements existing or adopted subsequent hereto ~~which that~~ are more stringent than the provisions and limitations contained herein. Any provision of this chapter and rules adopted pursuant hereto ~~which that~~ are more stringent than any such applicable federal, State, or local requirement ~~shall~~ will prevail and ~~shall~~ be the standard for compliance by the connectors to and the discharges to the public stormwater system.

E. Accidental Spill Prevention and Control

Dischargers who are not required to obtain an NPDES permit; but who handle, store, or use hazardous or toxic substances or discharges prohibited under Section 13.14.105.E General Discharge Prohibitions, on their sites; ~~shall~~ must prepare and submit to the Manager, at the Manager's request, an Accidental Spill Prevention Plan within 60 days of notification by the City. If other laws or regulations require an Accidental Spill Prevention and Control Plan, a plan that meets the requirement of those other laws and regulations will satisfy the requirement of this section.

F. Notification of Spills

As soon as any person in charge of a facility, or responsible for emergency response for a facility, becomes aware of any suspected, confirmed, or unconfirmed release of material, pollutants, or waste creating a risk of discharge to the public stormwater system, such persons ~~shall~~ must:

1. Begin containment procedures;
2. Notify proper emergency personnel in case of an emergency;
3. Notify appropriate City and/or State officials regarding the nature of spill;

4. Follow up with the City regarding compliance and modified practices to minimize future spills, as appropriate.

The notification requirements of this section are in addition to any other notification requirements set forth in federal, State, or local regulations and laws. The notification requirements do not relieve the person of necessary remediation or enforcement action set forth in Section 13.14.115.

F. ~~Requirement to Eliminate Illicit Connections~~

1. ~~The Manager may require by written notice that a person responsible for an illicit connection to the public stormwater system comply with the requirements of this chapter to eliminate the illicit connection or secure approval for the connection by a specified date.~~
2. ~~If, subsequent to eliminating a connection found to be in violation of the chapter, the responsible person can demonstrate that an illicit discharge will no longer occur, that person may request approval to reconnect. The reconnection or reinstallation of the connection shall be at the responsible person's expense.~~

G. ~~Requirement to Remediate~~

~~Whenever the Manager finds that a discharge of pollutants is taking place, or has taken place, which will result in, or has resulted in, pollution of stormwater or the public stormwater system, the Manager may require by written notice to the responsible person that the pollution be remediated and the affected property restored, to the standards established by the Manager, within a specified time.~~

H. ~~Requirement to Monitor and Analyze~~

~~Whenever the Manager determines that any person is engaged in any activity, and/or owns or operates any facility, which may cause or contribute to stormwater pollution or illicit discharges to the public stormwater system, the Manager may, by written notice, order that such person undertake such monitoring activities and/or analyses, and furnish such reports, as the Manager may deem necessary to demonstrate compliance with this chapter. The written notice shall be served either in person or by certified or registered mail, return receipt requested, and shall set forth the basis for such order and shall particularly describe the monitoring activities and/or analyses and reports required. The burden to be borne by the owner or operator; including costs of these activities, analyses, and reports; shall bear a reasonable relationship to the need for the monitoring, analyses, and/or reports and the benefits to be obtained. The recipient of such order shall undertake and provide the monitoring, analyses, and/or reports within the time frames set forth in the order.~~

G. Stormwater Treatment

The quality of stormwater leaving the site after development ~~shall~~ must be equal to or better than the quality of stormwater leaving the site before development, based on the following criteria:

1. On-site mitigation facilities for water quality required for development ~~shall~~ must be designed, installed, and maintained in accordance with the Public Works Standards.
2. Land use activities of particular concern as pollution sources ~~shall~~ must implement

additional best management practices for pollution control including, but not limited to, those best management practices specified in the Public Works Standards.

3. Development in a watershed that drains to streams with established total maximum daily load (TMDL) limitations; as provided under the Clean Water Act, Oregon Law, Administrative Rules, and other legal mechanisms; ~~shall~~ must assure that on-site mitigation facilities for water quality control meet the requirements for pollutants of concern.

H. Design and Performance Criteria for Stormwater Detention and Water Quality Treatment Facilities Constructed on Private Property

1. All on-site mitigation facilities; including stormwater detention, retention, and water quality treatment facilities required by the City; ~~shall~~ must be designed and constructed to meet the Public Works Standards.
2. Except as permitted by the ~~Engineering Director~~ Manager, as provided by the Public Works Standards, on-site mitigation facilities ~~shall~~ must be located on private property and ~~shall~~ may not be located on property that will become a public right-of-way, public stormwater easement, or future street plan.
3. Except as permitted by the Manager, as provided by the Public Works Standards, once constructed, the on-site mitigation facilities ~~shall~~ must be privately owned, operated, and maintained. Maintenance responsibility ~~shall~~ must include all elements of the stormwater detention and water quality treatment system up to the point of connection with a drainage structure or waterway of the public stormwater system. Such connection ~~shall~~ is subject to City approval.
4. Maintenance as required by the Public Works Standards ~~shall~~ must be specified in an operation and maintenance plan submitted to and approved by the Manager prior to issuance of a notice to proceed with public improvements. Prior to the time of project acceptance, the developer or applicant ~~shall~~ must enter into an agreement with the City to ensure the implementation of the operation and maintenance plan, and a memorandum of agreement ~~shall~~ must be recorded with Clackamas County. Private stormwater detention and water quality treatment facilities are subject to periodic inspection by the City to ensure proper maintenance and performance.
5. Failure to properly operate or maintain on-site mitigation facilities for stormwater detention, retention, and water quality treatment according to the operation and maintenance plan of the adopted City of Portland Stormwater Management Manual in effect on the date of the ordinance codified in this chapter is a violation.

(Ord. 2013 § 1, 2010; Ord. 2025 § 3, 2011; Ord. 2036 § 3, 2011; Ord. 2223 § 1, 2022)

§ 13.14.030. REQUEST FOR SERVICE, INITIATION OF BILLING.

A request for water service constitutes a request for stormwater service and will initiate appropriate billing for stormwater services as established in this chapter. If development of a parcel does not require initiating water service, the creation of an improved premises from which stormwater may be discharged into the public stormwater system ~~shall~~will constitute a request for service and initiate the obligation to pay the fees and charges authorized in this chapter.

(Ord. 1755 § 6, 1994; Ord. 2013 § 1, 2010; Ord. 2223 § 1, 2022)

§ 13.14.040. CHARGES FOR STORMWATER SERVICE.

- A. Except as the charges may be reduced under subsection C of this section, the obligation to pay stormwater service charges arises whenever there is a request for stormwater service for an improved premises. Unless another person responsible has agreed in writing to pay and a copy of that writing is filed with the City, the person receiving the City's water utility charge bill ~~shall~~must pay the stormwater charges as set by City Council resolution. If there is no water service to the property or if water service is discontinued and the property is an improved premises, the stormwater charges ~~shall~~must be paid by the person responsible for the property.

The person required to pay the charge is hereafter referred to as the customer.

- B. The City Council may by resolution establish fees and charges necessary to provide and operate a stormwater system and service.
- C. Upon completion of the on-site mitigation credit application package available from the City's Public Works Department, a customer of the utility may request a reduction of the stormwater service charge. The service charge will be reduced in relation to the customer's ability to demonstrate that on-site stormwater facilities meet or exceed the City's standards for stormwater quantity and quality control at that site.

Any reduction given ~~shall~~will continue until the condition of the property is changed or until the ~~Public Works Director~~Manager determines the property no longer qualifies for the credit given. Upon change in the condition of the property, another application may be made by a person responsible.

- D. Service charge avoidance may be requested through the application package available from the Public Works Department. The criteria for waiver of the service charge as it applies to a specific customer includes total retention of stormwater with no effective discharge to the City's stormwater system; the petitioner's ability to demonstrate through hydrologic/hydraulic analysis that the site receives no stormwater service from the City's stormwater system; and proof that stormwater facilities are constructed and maintained to City standards.
- E. For the purposes of this chapter, dry wells are not an on-site mitigation control system eligible for service charge reduction or service charge avoidance because of the potential water quality impact that dry wells may have on the City's groundwater resources.

(Ord. 1755 § 6, 1994; Ord. 2013 § 1, 2010; Ord. 2223 § 1, 2022)

§ 13.14.050. STORMWATER CHARGES—BILLING.

- A. Charges for stormwater service supplied by the City to any customer ~~shall~~will be charged for and billed to each such customer in accordance with rates established by the City Council. Prior to the establishment of stormwater service fees and charges by the City Council, the Milwaukie Citizens Utility Advisory Board ~~shall~~must~~will~~ prepare and deliver a report and recommendation on rates to the City Council. The Committee ~~shall~~must prepare and deliver its recommendation to City Council on an annual basis, according to the rules established by City Council. Stormwater service fees and charges as established by the City Council ~~shall~~must~~will~~ be added to and made a part of the billings for water and sewer service.
- B. The customer ~~shall~~be responsible for all stormwater service fees and charges, except as allowed by Section 13.14.040. The City may require deposits prior to providing stormwater service or in lieu of a deposit, obtain a signed agreement from the property owner, whether the customer or not, that they will be ultimately liable for the charges and that the City may use a lien as one method to secure payment if the charges are not paid. However, the City may not require a property owner to sign such an agreement.
- C. Billings may be prorated. The proration ~~shall~~will be a daily rate determined by dividing the annual minimum billing by 365 days times the number of days of occupancy from last meter reading and/or billing date.
- D. A reduced stormwater service charge may be charged for customers who qualify as low income utility customers under the provisions of Chapter 13.20 of this code.
- E. All money collected through stormwater fees and charges ~~shall~~must~~will~~ be deposited in the stormwater utility account as established and maintained by the City's Finance Director.
- F. Funds collected under this chapter will be used for the purpose of designing, acquiring, developing, constructing, maintaining, improving, and operating both manmade and nature-based stormwater systems.

(Ord. 1755 § 6, 1994; Ord. 2013 § 1, 2010; Ord. 2223 § 1, 2022)

§ 13.14.055. PUBLIC INVESTMENT OF STORMWATER FUNDS.

Funds collected under this chapter will not be used for maintaining, operating, or improving a stormwater system on private property, or to provide direct financial assistance for private tree removal except when:

- A. Providing non-federal grant match funding to projects that reduce or eliminate the risk of repetitive flood damage to buildings on private property insured by the National Flood Insurance Program; or
- B. The stormwater system is (or component thereof) demonstrated to the satisfaction of the ~~City Engineer~~Manager to provide a stormwater benefit that extends beyond the boundaries of the private property; or
- C. It can be demonstrated to the satisfaction of the ~~City Engineer~~Manager in consultation with the Urban Forester that a private tree provides a stormwater benefit that extends beyond the boundaries of the private property; or
- D. The stormwater system has been dedicated to the City and is within a public easement.
(Ord. 2223 § 1, 2022)

§ 13.14.060. STORMWATER CHARGES—WHEN DELINQUENT.

- A. The City ~~shall~~mustwill prepare and mail billings for stormwater fees and charges on the last business day of each month. Payment is due on the 15th of the month following the billing date. Accounts are delinquent if the City does not receive full payment by 5:00 p.m. on the last business day of the month immediately following the billing date.
- B. A delinquent fee, in an amount established by resolution of the City Council, ~~shall~~will be added to all delinquent accounts.
- C. The Finance Director or designee is authorized to determine what constitutes a de minimis account balance and to waive the penalties in subsections B and D of this section in de minimis or extenuating circumstances.
- D. In addition to other lawful remedies, the Finance Director may enforce the collection of charges authorized by this chapter by withholding delivery of water to any premises where the stormwater service fees and charges are delinquent or unpaid, following the procedures and standards for shutting off water service for nonpayment of water bills as provided in

Chapter 13.04. However, the Finance Director ~~shall~~may not deny or shut off water service to any subsequent tenant based upon an unpaid claim for services furnished to a previous tenant who has vacated the premises.

(Ord. 1755 § 6, 1994; Ord. 1895 § 4, 2001; Ord. 2013 § 1, 2010; Ord. 2223 § 1, 2022)

§ 13.14.070. DELINQUENT CHARGES—LIEN.

If the property owner elects pursuant to Section 13.14.050.B to authorize the use of a lien on real property to secure stormwater charge payment in lieu of a security deposit, all stormwater charges ~~shall~~will be a lien against the premises served from and after the date of billing and entry on the ledger or other records of the City pertaining to its municipal stormwater system, and such ledger record or other record ~~shall~~must be made accessible for inspection by anyone interested in ascertaining the amount of such charges against the property. Whenever a bill for stormwater service remains unpaid 60 days after it has been rendered, the lien thereby created may be foreclosed in the manner provided for by ORS 223.610 or in any other manner provided by law or City ordinance.

(Ord. 1755 § 6, 1994; Ord. 2013 § 1, 2010; Ord. 2223 § 1, 2022)

§ 13.14.080. APPEAL.

Any customer aggrieved by any decision made with regard to the customer's account or a decision on charge reduction or avoidance may appeal to the Manager by filing with the City a written request for review no later than 10 days after receiving the decision. The Manager's decision ~~shall~~will~~must~~ be subject to review by the City Council upon filing of an appeal within 15 days of the notice of decision.

(Ord. 1755 § 6, 1994; Ord. 2013 § 1, 2010; Ord. 2223 § 1, 2022)

§ 13.14.090. RIGHT OF ACCESS.

Employees of the City ~~shall~~must be provided access during regular business hours to all parts of the premises ~~which~~that include portions of the City's stormwater drainage system for the purpose of inspecting the condition of the pipes and fixtures and the manner in which the system is used. Should there be no one available on the premises, notice will be provided to the owner, tenant, occupant, or their agent that arrangements must be made to allow the inspection.

(Ord. 1755 § 6, 1994; Ord. 2013 § 1, 2010; Ord. 2223 § 1, 2022)

§ 13.14.100. TAMPERING WITH SYSTEM.

- A. No unauthorized person ~~shall~~may damage, destroy, uncover, deface, or tamper with any conduit, structure, appurtenance, or equipment ~~which~~that is a part of the stormwater system.
- B. The Manager may adopt such rules and regulations as are necessary to protect the stormwater system and the public health, safety, and welfare. Violation of said rules or regulations is deemed a violation of this chapter and ~~shall~~will be punished accordingly.
- C. Portions of Johnson Creek, Kellogg Creek, and their natural tributaries are within the boundaries of the city and are considered waters of the United States pursuant to the CWA.

In order to protect the waters the City has a comprehensive enforcement program to comply with:

1. The 1987 Amendments to the CWA, as implemented by the Environmental Protection Agency (EPA) NPDES regulations adopted November 16, 1990, make necessary the adoption of plans and programs for stormwater management meeting specified criteria.
 2. Section 402(p) of the CWA (33 U.S.C. 1251 et seq.), as amended by the Water Quality Act of 1987, requires that municipalities must:
 - a. Prohibit nonstormwater discharge into the public stormwater system; and
 - b. Require controls to reduce the discharge of pollutants from stormwater to the maximum extent practicable.
 3. Section 303(d) of the CWA requiring states and the EPA to identify certain substandard waters and to set total maximum daily loads (TMDLs). The Oregon Department of Environmental Quality has and will continue to establish TMDLs for some water bodies within the city. The City seeks to comply with all TMDL requirements.
 4. The Endangered Species Act (ESA) and associated 4(d) rules covering protection of West Coast salmon and steelhead.
 5. All provisions of the federal law by implementing a stormwater management plan, in conjunction with other co-permittees.
 6. The Safe Drinking Water Act and Divisions 40 and 44 of Chapter 340 of the Oregon Administrative Rules pertaining to UIC facilities.
- (Ord. 1755 § 6, 1994; Ord. 2013 § 1, 2010; Ord. 2223 § 1, 2022)

§ 13.14.105. DISCHARGE REGULATIONS.

A. Discharge of Pollutants

The commencement, conduct, or continuance of any nonstormwater discharge to the public stormwater system is prohibited and is a violation of this chapter, except as described below.

1. The prohibition ~~shall~~ does not apply to any nonstormwater discharge permitted or approved under an Industrial or Municipal NPDES permit, waiver, or discharge order issued to the discharger and administered by the DEQ, provided that the discharger is in full compliance with all requirements of the permit, waiver, or discharge order and other applicable laws or regulations and provided that written approval has been granted by the City for any discharge to the municipal separate storm wastewater system (MS4).
2. Except as provided in subsection A.3, the prohibition ~~shall~~ does not apply to the following non-stormwater discharges to the public stormwater system: ~~municipal uncontaminated water line flushing;~~ landscape irrigation; ~~diverted stream flows;~~ rising groundwater, ~~uncontaminated groundwater infiltration (as defined in 40 CFR 35.2005(20)) to the municipal separate storm sewer system (MS4);~~ separate storm sewers; ~~rising groundwaters;~~ uncontaminated pumped groundwater; ~~discharges from potable water sources (including potable groundwater monitoring wells and drainage and flushing of municipal potable water storage reservoirs), startup flushing of groundwater wells, foundation, footing and crawlspace drains (where flows are not contaminated);~~ drains, uncontaminated air conditioning or compressor condensation condensate; ~~irrigation water, springs, water from crawl space pumps, footing drains, lawn watering, individual residential car washing, charity car washing (provided that steam and heat are not used,~~

washing is restricted to the outside of the vehicle with no rinsing or washing of engines, transmissions, or undercarriages, and only phosphate-free soaps/detergents are used); flows from riparian habitats and wetlands, dechlorinated swimming pool discharges, including hot tubs (heated water must cool for at least 12 hours prior to discharge and swimming pool and hot tub discharges with other pollutants such as bromine and copper may not be discharged to the MS4);—street and pavement wash-waters, including for bridges or pedestrian bridges (provided that chemicals, soaps, detergents, steam, or heated water are not used); routine external building wash-down (provided that chemicals, soaps, detergents, steam, or heated water are not used); and water associated with dye testing activity;—and flows from fire fighting activities.

3. The Manager may require best management practices to reduce pollutants, or may prohibit a specific discharger from engaging in a specific activity identified in subsection A.2, if at any time the Manager determines that the discharge is, was, or will be a significant source of pollution.

B. Discharge in Violation of Permit

Any discharge that would result in or contribute to a violation of an existing or future Municipal NPDES permit and any amendments, revisions, or reissuance thereof, either separately considered or when combined with other discharges, is a violation of this chapter and is prohibited. Liability for any such discharge ~~shall be~~ is the responsibility of the person(s) causing or responsible for the discharge, and such persons ~~shall~~ must defend, indemnify, and hold harmless the City in any administrative or judicial enforcement action against the permit holder relating to such discharge.

C. Illicit Connections, ~~and Illicit Discharges,~~ and Chronic Illicit Discharge

It is prohibited to establish, use, maintain, or continue illicit connections to the public stormwater system, or to commence or continue any illicit discharges to the public stormwater system.

D. Waste Disposal Prohibitions

1. No person may throw, deposit, leave, maintain, keep, or permit to be thrown, deposited, left, or maintained, in or upon any public or private property, driveway, parking area, street, alley, sidewalk, catch basin, inlet, or other component of the public stormwater system, materials that may cause or contribute to pollution, including, but not limited to, any refuse, rubbish, garbage, litter, yard debris, landscape materials, compost, topsoil, bark, gravel, sand, dirt, sod, sediment or sediment-laden runoff from construction or landscaping activities, hazardous materials, or other discarded or abandoned objects, articles, and accumulations.
2. Runoff from commercial or industrial operations or businesses that wash or detail vehicles, engines, transmissions, equipment, interior floors, or parking lots, ~~shall~~ may not discharge directly to a private or public stormwater system; this includes, but is not limited to, outdoor commercial, industrial, or business activities that create airborne particulate matter, process by-products or wastes, hazardous materials or fluids from stored vehicles, where runoff from these activities discharges directly or indirectly to a private or public stormwater system.

E. General Discharge Prohibitions

1. Discharge to Sanitary Sewer System

No person ~~shall~~may discharge or contribute to the discharge of any stormwater or other unpolluted water into the City's sanitary sewer system.

2. Discharge to Public Storm Sewer System

It is unlawful to discharge or cause to be discharged directly or indirectly into the public stormwater system any of the following:

- a. Any discharge having a visible sheen, or containing floating solids or discoloration (including, but not limited to, dyes and inks);
- b. Any discharge having a pH of less than 6.5 or greater than 8.5 or that contains toxic substances;
- c. Any discharge ~~which~~that causes or may cause damage, interference, nuisance, or hazard to the public stormwater system or the City personnel;
- d. Any discharge containing human sanitary waste or animal feces.

(Ord. 2013 § 1, 2010; Ord. 2223 § 1, 2022)

§ 13.14.110. COMPLIANCE REQUIRED.

The provisions of this chapter must be strictly complied with in every instance, and service must be paid for by all premises supplied, according to the rates established by the City Council. Exceptions to these provisions ~~shall~~may be made only upon the written authorization of the Manager. (Ord. 1755 § 6, 1994; Ord. 2013 § 1, 2010; Ord. 2223 § 1, 2022)

§ 13.14.115. INSPECTION AND ENFORCEMENT.

A. Authority to Inspect

1. Whenever necessary to make an inspection to enforce any of the provisions of this chapter, or whenever the Manager has reasonable cause to believe that there exists in any building or upon any premises any condition ~~which~~that may constitute a violation of the provisions of this chapter, the Manager may enter such building or premises at all reasonable times to inspect the same or perform any duty imposed upon the Manager by this chapter; provided that: (a) if such building or premises is occupied, he or she first ~~shall~~must present proper credentials and request entry; and (b) if such building or premises is unoccupied, he or she must first ~~shall~~ make a reasonable effort to locate the owner or other persons having charge or control of the building or premises and request entry.
2. The property owner or occupant has the right to refuse entry but, in the event such entry is refused, the Manager is hereby empowered to seek assistance from any court of competent jurisdiction in obtaining such entry and performing such inspection.
3. As used in this section, inspection includes, but is not limited to, the physical inspection of a facility, and the review and copying of records relating to compliance with Sections 13.14.025 to 13.14.130.

B. Authority to Sample, Establish Sampling Devices, and Test

With the consent of the owner or occupant, or with court consent, the Manager may establish on any property such devices as are necessary to conduct sampling or metering operations. During all inspections as provided herein, the Manager may take any samples deemed necessary to aid in the pursuit of the inquiry or to record the on-site activities.

C. Enforcement Procedures

For any violation of MMC Chapter 13.14, the following enforcement procedures apply:

1. Notice of Violation

If the Manager determines that an applicant, other responsible party, or other person has failed to comply with MMC Chapter 13.14, the Manager must issue a written notice of violation to such person. The notice of violation must be served in person or by certified or registered mail, return receipt requested. The notice of violation must include:

- a. The name and address of the applicant or the responsible person;
- b. The address or other description of the site where the violation is occurring;
- c. A statement specifying the nature of the violation;
- d. A summary of potential remedial measures that may be necessary to bring the act or failure to act into compliance with Chapter 13.14;
- e. The date by which compliance is required, which must be within 10 days of issuance; or, if compliance is anticipated to take longer than 10 days due to technical, logistical, or other reasonable issues, require the applicant or other responsible party, within 10 days, to provide a written action plan for how compliance will be achieved and a timeline for compliance, which may not exceed 6 months without approval by the Department of Environmental Quality. The amount and type of pollution discharged will inform the date by which compliance is required;
- f. A statement of the penalties that may be assessed; and
- g. A statement of other enforcement action that may occur.

2. Stop Work Order

The Manager may order work to be stopped for any violation of Chapter 13.14 that arises from the work authorized under a permit. The stop work order must be posted on the property where the violation has occurred and will remain in effect until the remedial measures set forth in the Notice of Violation have been completed, or the violations have been otherwise cured. The stop work order may be withdrawn or modified by the Manager to enable the necessary remedial measures.

3. Chronic Illicit Discharge

Notwithstanding other provisions in this Section 13.14.115, the Manager may impose a civil penalty and pursue enforcement without having issued a notice of violation or making attempts to secure voluntary correction where the Manager determines that the violation was knowing, intentional, or a repeat of a similar violation.

4. Failure to Comply

In the event the applicant, responsible party, or other person fails to take the remedial measures set forth in the notice of violation, the Manager may issue a citation for each day the violation remains unremedied after the date set forth in the notice of violation, consistent with the procedures set forth in Chapter 1.08, Short-Form Uniform Complaint and Citation Method and Code Enforcement Procedures.

5. Rights, remedies, and penalties set forth in this Chapter 13.14 are cumulative, not mutually exclusive, and in addition to any other rights, remedies, and penalties available to the City under any other provision of law.

6. Additional Requirements

a. Requirement to Eliminate Illicit Connections

For an illicit connection to the public stormwater system, compliance requires eliminating the connection. Once the connection is eliminated, if the responsible person can demonstrate that an illicit discharge will no longer occur, that person may request approval to reconnect as provided in Section 13.14.030. The reconnection or reinstallation of the connection will be at the responsible person's expense.

b. Requirement to Monitor and Analyze

Whenever the Manager determines that any person is engaged in any activity, and/or owns or operates any facility, which may cause or contribute to stormwater pollution, illicit discharge, or chronic illicit discharge to the public stormwater system, the Manager may, by written notice, order that such person undertake such monitoring activities and/or analyses, and furnish such reports, as the Manager may deem necessary to demonstrate compliance with this chapter. The written notice must be served either in person or by certified or registered mail, return receipt requested, and must set forth the basis for such order and particularly describe the monitoring activities and/or analyses and reports required. The burden to be borne by the owner or operator; including costs of these activities, analyses, and reports; must bear a reasonable relationship to the need for the monitoring, analyses, and/or reports and the benefits to be obtained. The recipient of such order must undertake and provide the monitoring, analyses, and/or reports within the time frames set forth in the order.

~~C. Continuing Violation~~

~~Unless otherwise provided, a person shall be deemed guilty of a separate offense for each and every day during any portion of which a violation of this chapter is committed, continued, or permitted by the person.~~

~~D. Concealment~~

~~Causing, permitting, aiding, abetting, or concealing a violation of any provision of this chapter shall constitute a violation of the chapter.~~

E. ~~Acts Resulting in Violation of Federal Law~~

~~Any person who violates any provision of this chapter, or any provision of any stormwater-related permit issued by DEQ, or who discharges waste or wastewater which causes pollution, or who violates any cease and desist order, prohibition, or effluent limitation, also may be in violation of the CWA, Safe Drinking Water Act, or the ESA and may be subject to the sanctions of these Acts including civil and criminal penalties.~~

F. ~~Violations Deemed a Nuisance~~

~~Any condition caused or permitted to exist in violation of any provision of this chapter is a threat to public health and safety. Any such condition is unlawful and constitutes a nuisance. In addition to any other remedies, the Manager may enforce this chapter by compliance order, stop work order, abatement proceedings, or civil action as provided in MMC 8.04.070, or as otherwise authorized by law.~~

(Ord. 2013 § 1, 2010; Ord. 2223 § 1, 2022)

§ 13.14.120. VIOLATIONS—and PENALTY.

A. Continuing Violation

Unless otherwise provided, a person must be deemed guilty of a separate offense for each and every day during any portion of which a violation of this chapter is committed, continued, or permitted by the person.

B. Concealment

Causing, permitting, aiding, abetting, or concealing a violation of any provision of this chapter constitutes a violation of the chapter.

C. Acts Resulting in Violation of Federal Law

Any person who violates any provision of this chapter, or any provision of any stormwater-related permit issued by Department of Environmental Quality, or who discharges waste or wastewater which that causes pollution, or who violates any cease and desist order, prohibition, or effluent limitation, also may be in violation of the Clean Water Act, Safe Drinking Water Act, or the Endangered Species Act and may be subject to the sanctions of these Acts including civil and criminal penalties.

D. Violations Deemed a Nuisance

Any condition caused or permitted to exist in violation of any provision of this chapter is a threat to public health and safety. Any such condition is unlawful and constitutes a nuisance, subject to the enforcement provisions in MMC 8.04.

E. Penalty

Violation of any provision of this chapter by any person, firm, or corporation is punishable by a fine of not more than \$1,000. Factors for determining the penalty amount may include, but are not limited to, the type, scale, and duration of the violation and whether the responsible party has been issued a notice of violation, citation, or otherwise held responsible for prior violations. Each day on which a violation occurs or continues is a separate offense.

(Ord. 1755 § 6, 1994; Ord. 2013 § 1, 2010; Ord. 2223 § 1, 2022)

§ 13.14.130. DISCLAIMER OF LIABILITY.

The degree of protection required by this chapter is considered reasonable for regulatory purposes and is based on scientific, engineering, and other relevant technical considerations. The standards set forth herein are minimum standards and the chapter does not imply that compliance will insure that there will be no unauthorized discharge of pollutants into the public stormwater system. This chapter ~~shall~~will not create liability on the part of the City, or any agent or employee thereof, for any damages that result from reliance on this chapter or any administrative decision lawfully made hereunder.

(Ord. 2013 § 1, 2010; Ord. 2223 § 1, 2022)

CHAPTER 16.28
EROSION CONTROL

Note: Prior ordinance history; Ord. 1718

§ 16.28.010. GENERAL POLICY.

- A. The policies of this chapter ~~shall~~ must will apply during construction and until permanent measures are in place following construction as described herein, unless otherwise noted.
- B. Temporary and permanent measures for all construction projects ~~shall~~ will must be required to lessen the adverse effects of erosion and sedimentation. The owner or his or her/her agent, contractor, or employee, ~~shall~~ must properly install, operate, and maintain both temporary and permanent works as provided in this section or in an approved plan, to protect the environment during the useful life of the project. These erosion control rules apply to all lands within the City of Milwaukie.
- C. Nothing in this chapter ~~shall~~ will relieve any person from the obligation to comply with the regulations or permits of any federal, State, or local authority.
- D. Maintenance and repair of existing facilities ~~shall be~~ is the responsibility of the owner of record.
- E. Erosion, sedimentation, and other pollutants reaching the public storm and/or surface water system resulting from development, construction, grading, filling, excavating, clearing, and any other activity ~~which~~ that accelerates erosion ~~shall~~ must be prevented.
- F. No visible or measurable erosion ~~shall~~ will leave the property during construction or during activity described in subsection E above. The owner of the property, together with any person who causes such action from which the visible or measurable erosion occurs, ~~shall be~~ is responsible for clean up, fines, and damages. Clean up responsibilities include clean up of creeks, drainage ways, or wetlands impacted by a project. For the purposes of this chapter "visible and measurable erosion" includes, but is not limited to:
 - 1. Deposits of mud, dirt, sediment, or similar material exceeding one-half cubic foot in volume on public or private streets, adjacent property, or into the storm and surface water system, either by direct deposit, dropping, discharge, or as a result of the action of erosion;
 - 2. Evidence of concentrated flows of water over bare soils; turbid or sediment-laden flows; or evidence of on-site erosion such as rivulets or bare soil slopes, where the flow of water is not filtered or captured on the site, and/or;
 - 3. Earth slides, mud flows, earth sloughing, or other earth movement ~~which~~ that results in material leaving the property.
- G. Dust and other particulate matters containing pollutants can settle on property and be carried to waters of the state though rainfall or other means. Dust ~~shall~~ must be minimized to the extent practicable, utilizing all measures necessary, including, but not limited to:

1. Sprinkling haul and access roads and other exposed dust-producing areas with water;
 2. Establishing temporary vegetative cover;
 3. Placing wood chips or other effective mulches on vehicle and pedestrian use areas;
 4. Use of covered haul equipment; and/or
 5. Prewetting cut and borrow area surfaces.
- (Ord. 1899 § 1, 2002)

§ 16.28.020. EROSION CONTROL PERMIT AND EROSION CONTROL PLANS—APPLICABILITY—CONFORMANCE.

A. Definitions.

"Erosion control permit" means the official approval issued by the City that demonstrates compliance with this chapter for activities described in the application form, erosion control plan, and related materials submitted pursuant to this chapter.

"Erosion control plan" means all documents, maps, plans and other information specified in Section 16.28.030 and submitted in association with an application for an erosion control permit.

"Manager" means the City Manager or designee.

- B. An erosion control plan that meets the requirements of Section 16.28.030 is required prior to any approval of an erosion control permit.
- C. An erosion control permit is required as follows:
1. Prior to placement of fill, site clearing, or land disturbances, including but not limited to grubbing, clearing or removal of ground vegetation, grading, excavation, or other activities, any of which results in the disturbance or exposure of soils exceeding 500 square feet.
 2. For disturbed areas or exposed soils less than 500 square feet, where the City has determined that site conditions may result in visible and measurable erosion and where the City has provided written notice of the requirement to obtain an erosion control permit to the property owner. Upon notice by the City, all work ~~shall~~must cease pending approval of an erosion control permit and installation of approved erosion control measures.
 3. For any lot that includes natural resources regulated by Milwaukie Zoning Ordinance Section 19.402 Natural Resources, an erosion control permit ~~shall~~will~~must~~ be required prior to placement of fill, site clearing, or land disturbances, including but not limited to grubbing, clearing or removal of ground vegetation, grading, excavation, or other activities, any of which has the potential for, or results in visible and measurable erosion, regardless of the area of disturbance.
- D. An erosion control permit ~~shall~~will not be issued for activities on lots that include natural resources regulated by Section 19.402, where the site activity has not been authorized, or is not exempt under the provisions of Milwaukie Zoning Ordinance Section 19.402 Natural

Resources as determined by the Planning Director. This provision does not apply where the erosion control permit is associated with correction of a violation of the City Code or as necessary for public safety, or the protection of property or water quality.

E. Timing

Approval of the erosion control permit is required prior to the following, whichever comes first:

1. Issuance of grading permits, building permits, and approval of construction plans for subdivision; or
2. Placement of fill, site clearing, land disturbances, including but not limited to grubbing, clearing or removal of ground vegetation, grading, excavation, or other activities, any of which disturbs or exposes soil.

F. Erosion control measures set forth in any approved erosion control plan ~~shall~~must be implemented and maintained on the site until the date set forth in the plan, or the amended date as necessary for the establishment of final landscaping. The City may allow for the removal of erosion control measures at an earlier date if erosion control is assured by established landscaping.

(Ord. 1899 § 1, 2002; Ord. 2036 § 3, 2011)

§ 16.28.030. CONTENTS OF EROSION CONTROL PLAN AND GENERAL REQUIREMENTS.

A. Erosion control plans ~~shall~~ must include a description of erosion control methods that are adequate to ensure that runoff siltation and pollutants from the grading, site clearing, or construction are contained onsite during the period of activity on the site until the final landscaping is sufficiently established to control erosion. Each plan ~~shall~~ must contain a date ~~which~~that is the estimated ending date for maintaining erosion control measures. That date may be extended if final landscaping has not been sufficiently established to control erosion. Plan submittal requirements, and recommended erosion control measures, are included in the Clackamas County/City of Milwaukie Technical Guidance Handbook for Erosion/Sedimentation Control Plans (August 1991) (Guidance Handbook), which is hereby adopted in total as part of this chapter. Copies of the Guidance Handbook are available for a fee at the City Public Works Department.

B. At a minimum the Erosion Control Plan ~~shall~~must include:

1. Identification of potential sources of stormwater pollution at the construction site
2. The stormwater controls methods and/or facilities to be used to prevent erosion and pollution created from the development both during and after construction (site-specific considerations ~~shall~~must be incorporated);
3. Limits of clearing by flagging boundaries in the field before starting site grading or construction (staging areas ~~shall~~ must be included);
4. An analysis of source controls such as detention and storage techniques during construction showing existing contours as an alternative method to control erosion from stormwater runoff;

5. A drainage plan during construction;
 6. Existing contours as well as all sensitive areas, creeks, streams, wetlands, open areas, and areas of natural riparian vegetation pursuant to Chapter 322; and
 7. A description of historic localized flooding problems resulting from surface water runoff, FEMA, or flooding problems known to the community or the local jurisdiction.
- C. A site plan prepared by an Oregon registered engineer ~~shall be~~ required for sites with disturbed area of 5 acres or greater.
- D. The Erosion Control Plan must be kept on site and made available during site inspections or upon request.
- E. Erosion Control Plans must be maintained and updated as site conditions change or as directed by the City.
- F. Additional measures required by subsection C above may include 1 or more of the following:
1. Limited area cleared at any one time;
 2. Additional drainage requirements during construction;
 3. Filtering or treatment of runoff;
 4. Additional water quality measures;
 5. Additional erosion control to cover portions of the site;
 6. Maintaining some existing vegetation adjacent to water features, such as creeks, streams, and wetlands or areas of natural riparian vegetation pursuant to Chapter 322;
 7. Additional facilities to reduce volume and velocity of water runoff;
 8. If there are no workable alternatives, limit clearing, and grading in some areas between November 1st and April 30th; and
 9. Additional measures required by the Guidance Handbook.
- G. All construction activities disturbing 5 or more acres ~~shall~~ must obtain an NPDES erosion control permit for construction activities issued by the City of Milwaukie.
(Ord. 1899 § 1, 2002)

§ 16.28.040. APPROVAL PROCESS—FEES.

Fees to cover the cost of erosion control plan review, site inspections, and the Clackamas County/City of Milwaukie Technical Guidance Handbook for Erosion/Sedimentation Control Plans (August 1991) will be set by City Council resolution.
(Ord. 1899 § 1, 2002)

§ 16.28.050. MAINTENANCE AND AMENDMENT OF INADEQUATE MEASURES.

The applicant ~~shall~~ must maintain all facilities required by an approved erosion control plan so as to assure their continued effectiveness during construction or other permitted activity. If the facilities and techniques approved in an erosion control plan are not effective or sufficient as determined by

the City's Site Inspector, the permittee ~~shall~~must submit a revised plan within 3 working days of written notification by the City. In cases where erosion is occurring, the City may require the applicant to implement interim control measures prior to submittal of a revised erosion control plan and without limiting the City's right to undertake enforcement measures. Upon approval of the revised plan by the City, the permittee ~~shall~~must immediately implement the revised plan.

(Ord. 1899 § 1, 2002)

§ 16.28.060. WORK IN PROGRESS.

Permittees or property owners for any site activities ~~which~~that were underway on the effective date of the ordinance codified in this chapter, may be required to prepare an erosion control plan for approval pursuant to this chapter. If the City determines that an erosion control problem exists, and requests an erosion control plan, ground work on the site ~~shall~~must cease pending approval of the plan and installation of approved erosion control measures. The provisions of this section ~~shall~~ apply only until final landscaping on the site is sufficiently established to control erosion.

(Ord. 1899 § 1, 2002)

§ 16.28.070. PERFORMANCE.

The City may require the applicant to submit a bond, cashier's check, or irrevocable letter of credit from an acceptable financial institution to secure performance of the requirements of this chapter. Upon default, the City may perform work or remedy violations and draw upon the bond or fund. If the City does not require a bond and the developer does not perform the erosion control plan in whole or in part, the City may, but ~~shall~~is not be obligated to, perform or cause to be performed corrective work and charge the developer. Such amount ~~shall~~will ~~must~~ bear interest at 9% per annum and ~~shall~~ be a lien upon the property foreclosable in accordance with ORS Chapter 88.

(Ord. 1899 § 1, 2002)

§ 16.28.080. EROSION CONTROL CERTIFICATION.

A. Developers/contractors of building activities requiring erosion control permits who have a certified individual on staff with authority over erosion control and who is responsible for erosion control of the site, are eligible for a discount of their erosion control fees in accordance with the City fee schedule. On large or complex sites, the City may require an individual certified in erosion control to be on site at all times. Violations of this title that result in enforcement procedures described in Section 16.28.110, will result in revocation of the certification and require payment of the full erosion control fee. Recertification is required following erosion control violations resulting in enforcement actions. If certification is revoked, there may be additional inspection fees.

B. Certification ~~shall~~must involve training in erosion control techniques, issues, and implementation strategies. A minimum of 4 hours of classroom instruction ~~shall~~be required every 2 years.

(Ord. 1899 § 1, 2002)

§ 16.28.090. INSPECTION.

The erosion control measures ~~shall~~must be installed by the owner or his or her representative and ~~shall~~must be inspected by the City prior to the start of any excavation work.

(Ord. 1899 § 1, 2002)

§ 16.28.100. DEPOSIT OF SEDIMENT.

No person ~~shall~~will drag, drop, track, or otherwise place or deposit, or permit to be deposited, mud, dirt, rock, or other such debris upon a public street or into any part of the public storm and surface water system, including natural drainage systems, or any part of a private storm and surface water system ~~which~~that drains or connects to the public storm and surface water system, with the exception of sanding for ice and snow and maintenance such as crack or chip sealing. Any such deposit of material ~~shall~~must be immediately removed using hand labor or mechanical means. No material ~~shall~~will be washed or flushed into the road/street or any part of the storm or surface water system without erosion control measures installed to the satisfaction of the City, and any such action ~~shall~~will be an additional violation.

(Ord. 1899 § 1, 2002)

§ 16.28.110. ENFORCEMENT—VIOLATION—PENALTY.

A. Enforcement Procedures

For any violation of MMC Chapter 16.28, the following enforcement procedures apply:

1. Notice of Violation

If the Manager determines that an applicant, other responsible party, or other person has failed to comply with MMC Chapter 16.28, the Manager must issue a written notice of violation to such person. The notice of violation must be served in person or by certified or registered mail, return receipt requested. The notice of violation must include:

a. The name and address of the applicant or the responsible person;

b. The address or other description of the site where the violation is occurring;

c. A statement specifying the nature of the violation;

d. A summary of potential remedial measures that may be necessary to bring the act or failure to act into compliance with Chapter 16.28;

e. The date by which compliance is required, which must be within 10 days of issuance; or, if compliance is anticipated to take longer than 10 days due to technical, logistical, or other reasonable issues, require the applicant or other responsible party, within 10 days, to provide a written action plan for how compliance will be achieved and a timeline for compliance, which may not exceed 6 months without approval by the Department of Environmental Quality. The type and severity of pollution discharged will inform the date by which compliance is required;

f. A statement of the penalties that may be assessed; and

g. A statement of other enforcement action that may occur.

2. Stop Work Order

The Manager may order work to be stopped for any violation of Chapter 16.28 that arises from the work authorized under a permit. The stop work order must be posted on the property where the violation has occurred and will remain in effect until the remedial measures set forth in the Notice of Violation have been completed, or the violations have been otherwise cured. The stop work order may be withdrawn or modified by the Manager to enable the necessary remedial measures.

3. Repeat or Ongoing Violations

Notwithstanding other provisions in this Section 16.28.110, the Manager may impose a civil penalty and pursue enforcement without having issued a notice of violation or making attempts to secure voluntary correction where the Manager determines that the violation was knowing, intentional, or a repeat of a similar violation.

4. Failure to Comply

In the event the applicant, responsible party, or other person fails to take the remedial measures set forth in the notice of violation, the Manager may issue a citation for each day the violation remains unremedied after the date set forth in the notice of violation, consistent with the procedures set forth in Chapter 1.08, Short-Form Uniform Complaint and Citation Method and Code Enforcement Procedures.

5. Rights, remedies, and penalties set forth in this Chapter 16.28 are cumulative, not mutually exclusive, and in addition to any other rights, remedies, and penalties available to the City under any other provision of law.

~~A. The Engineering Director or designee shall enforce the provisions of this chapter.~~

~~B. Beginning or continuing site clearing, grading or construction activities without an approved erosion control plan required by this chapter constitutes a violation of this chapter. Failure to implement the erosion control measures set forth in the approved erosion control plan constitutes a violation of this chapter. No building shall be certified for occupancy if the property is deemed to be in violation of this chapter. Any person convicted of violating this chapter shall be punished by a fine of not more than \$300.00. Each day that such violation exists shall be deemed a separate violation of this chapter.~~

(Ord. 1899 § 1, 2002)

16.28.120 Violations and Penalty

A. Continuing Violation

Unless otherwise provided, a person must be deemed guilty of a separate offense for each and every day during any portion of which a violation of this chapter is committed, continued, or permitted by the person.

B. Violations Deemed a Nuisance

Any condition caused or permitted to exist in violation of any provision of this chapter is a threat to public health and safety. Any such condition is unlawful and constitutes a nuisance, subject to the enforcement provisions in MMC 8.04.070.

C. Penalty

Violation of any provision of this chapter by any person, firm, or corporation is punishable by a fine of not more than \$1,000. Factors for determining the penalty amount may include, but are not limited to, the type, scale, and duration of the violation and whether the responsible party has been issued a notice of violation, citation, or otherwise held responsible for prior violations. Each day on which a violation occurs or continues is a separate offense.

Exhibit B
CHAPTER 13.14
STORMWATER MANAGEMENT

§ 13.14.010. PURPOSE.

The City finds and declares that absent effective maintenance, operation, regulation, and control, existing stormwater drainage conditions in all drainage basins and subbasins within the City constitute a potential hazard to the health, safety, and general welfare of the City. The City Council further finds that nature-based and manmade stormwater facilities and conveyances together constitute a stormwater system and that the effective regulation and control of stormwater can best be accomplished through formation, by the City, of a stormwater utility.

(Ord. 1755 § 6, 1994; Ord. 2013 § 1, 2010; Ord. 2223 § 1, 2022)

§ 13.14.020. DEFINITIONS.

“Best Management Practices (BMPs)” means schedules of activities, prohibition of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the state. BMPs are also treatment requirements, operating procedures, and practices to control runoff, spillage, or leaks, sludge, or waste disposal, or drainage from raw material storages.

“Chronic Illicit Discharges” means continuous or repeated illicit discharges to a Municipal Separate Storm Sewer System (MS4), potentially resulting from sanitary/wastewater connections to an MS4, sanitary/wastewater inflows into an

MS4, unpermitted industrial wastewater discharges to the MS4, or other types of illegal dumping or poor housekeeping practices upstream from an outfall where irregular flows, color, smell, or other monitoring parameters indicate an issue that may need repeat investigations over time to ensure cross connections or illegal dumping are remedied. Chronic illicit discharges may not be long-term and ongoing as in the case of illicit connections that can be stopped easily. Chronic illicit discharges may be defined by inconclusive findings of outfall investigations indicating pollutant discharge or repeated reports by members of the public that have not been traced back to a definite source.

"City" means the City of Milwaukie, a municipality, and its authorized employees.

"City council" means the City Council of Milwaukie.

"Customer" means a person in whose name service is rendered as evidenced by the signature on the application/contract for stormwater, sanitary sewer, or water service or, in the absence of a signed instrument, by the receipt and payment of bills regularly issued in their name.

"Developed" means an area that has been altered by grading or filling of the ground surface, or by construction of any improvement or other impervious surface area, which affects the hydraulic properties of the location.

“Discharge” means any addition of any pollutant or combination of pollutants to waters of the state from any point source, or any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft that is being used as a means of transportation. This definition includes additions of pollutants into waters of the state from surface runoff, which is collected or channeled by humans; discharges through pipes, sewers, or other conveyances owned by a State, municipality, or other person, which do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works.

"Equivalent service unit (ESU)" means a configuration of development or impervious surface estimated to contribute an amount of runoff to the City's stormwater system that is approximately equal to that created by the average developed single-family residence within Milwaukie. One ESU is equal to 2,706 square feet of impervious surface area.

"Illicit Discharge" means any discharge to the City's storm sewer system that is not composed entirely of stormwater, except discharges permitted by a National Pollutant Discharge Elimination System (NPDES) permit or other state or federal permit, or otherwise authorized.

"Impervious surface" means any surface resulting from activities that prevents the infiltration of water or results in more runoff than in undeveloped conditions. Common impervious surfaces may include, but are not limited to, building roofs, traditional concrete or asphalt paving on walkways, patios, driveways, parking lots, gravel lots and roads, and packed earthen material.

"Improved premises" means any area that the Manager determines has been altered such that the runoff from the site is greater than that which could historically have been expected. Improved premises do not include public roads under the jurisdiction of the City, County, State or federal government.

"Manager" means the City Manager or designee.

Municipal Separate Storm Sewer System (MS4) means a conveyance or system of conveyance, including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains that are (i) owned or operated by a State, city, town, county, , or other public body having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, that is (ii) designed or used for collecting or conveying stormwater (iii) that is not a combined sewer; and (iv) that is not part of a Publicly Owned Treatment Works as defined at 40 CFR §122.2.

"National Pollutant Discharge Elimination System (NPDES)" means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring, and enforcing permits, and imposing and enforcing pretreatment requirements, under sections 307, 402, 318, and 405 of Clean Water Act [40 CFR §122.2].

"One- or two-family residential" means an area that is improved with one or two attached single-family dwelling units for occupancy each by a single family or a similar group of people, provided each dwelling has a separate billing within the City's utility billing system.

"On-site mitigation control system" means a stormwater drainage facility that prevents the discharge, or substantially reduces the discharge, of stormwater or nonpoint source pollution into a receiving water or public stormwater system facility.

"Person responsible" means the occupant, lessee, tenant, contract purchaser, owner, agent, or other person having possession of property, or if no person is in possession, then the person in control of the use of the property, or in control of the supervision of development on the property.

"Point Source" means a discernible, confined, and discrete conveyance including, but not limited to, a pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, vessel or other floating craft, or leachate collection system from which pollutants are or may be discharged. Point source does not include agricultural storm water discharges and return flows from irrigated agriculture.

"Pollutant" means dredged spoil; solid waste; incinerator residue; sewage; garbage; sewerage sludge; munitions; chemical wastes; biological materials; radioactive materials; heat; wrecked or discarded equipment; rock; sand; cellar dirt; and industrial, municipal, and agricultural waste

discharged into water.

"Public works standards" mean the City of Milwaukie Public Works Standards that the City requires be complied with for the design and construction of on-site mitigation facilities including stormwater detention, retention, and water quality treatment facilities.

"Stormwater" means that portion of precipitation that does not naturally percolate into the ground or evaporate, but flows via overland flow, interflow, channels, or pipes into a defined surface water channel or a constructed stormwater control infiltration facility.

"Stormwater service" means the operations of the City's stormwater utility in providing programs and facilities for maintaining, improving, regulating, collecting, and managing stormwater quantity and quality within the City's service area.

"Stormwater system" means any manmade or nature-based structure or configuration of ground that is used or by its location becomes a place where stormwater flows or is accumulated, including, but not limited to, pipes, sewers, curbs, gutters, manholes, catch basins, ponds, creeks, underground injection control (UIC) facilities, open drainageways, rain gardens, vegetated swales, permeable pavement, green roofs, urban forest canopy, tree trenches, rainwater harvesting, green streets and their appurtenances. Stormwater system does not include the Willamette River.

"Street wash water" means water that originates from publicly financed street cleaning activities consistent with the City's National Pollutant Discharge Elimination System (NPDES) municipal stormwater permit.

"Toxic substances" mean any chemical listed as toxic under Section 307(a)(1) of the Federal Clean Water Act (CWA) or Section 313 of Title III of Superfund Amendments and Reauthorization Act (SARA).

"Undeveloped" means any area that has not been altered by grading or filling of the ground surface, or by construction of any improvements or other impervious surface area, which affects the hydraulic properties of the location.

"Waters of the state" means lakes, bays, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Pacific Ocean within the territorial limits of the State of Oregon, and all other bodies of surface or underground waters, natural or artificial, inland or coastal, fresh or salt, public or private (except those private waters that do not combine or effect a junction with natural surface or underground waters) that are located wholly or partially within or bordering the state or within its jurisdiction.

(Ord. 1755 § 6, 1994; Ord. 2013 § 1, 2010; Ord. 2223 § 1, 2022)

§ 13.14.025. REGULATIONS AND REQUIREMENTS.

A. Compliance with NPDES Stormwater Permits

Any person or entity responsible for any discharge subject to any NPDES permit issued by the Oregon DEQ, from which pollutants may enter the public or private stormwater system, must comply with all provisions of such permits, including notification to and cooperation with local entities as required by federal regulations. Proof of compliance with said permits may be required in a form acceptable to the Manager prior to issuance of any grading, building, or occupancy permits or business license.

B. Compliance with State, Local, and Federal Regulations

All users of the public stormwater system, and any person or entity whose actions may affect the system, must comply with all applicable federal, State, and local laws, including Section 19.402 Natural Resources. Compliance with the requirements of this chapter in no way substitutes for, or eliminates the necessity for compliance with, applicable federal, State, and local laws.

C. Stormwater Management Document

The Manager will administer this Chapter 13.14 and may furnish additional policy, criteria, and information, including specifications and procedures for implementing the requirements of this chapter. In the event of a discrepancy between the requirements of any stormwater management document and the code, the requirement that is most protective of water quality overrides all other requirements.

D. Conflicts with Existing and Future Regulatory Requirements of Other Agencies

Any provisions or limitations of this chapter, and any rules adopted pursuant hereto, are superseded and supplemented by any applicable federal, State, or local requirements existing or adopted subsequent hereto that are more stringent than the provisions and limitations contained herein. Any provision of this chapter and rules adopted pursuant hereto that are more stringent than any such applicable federal, State, or local requirement will prevail and be the standard for compliance by the connectors to and the discharges to the public stormwater system.

E. Accidental Spill Prevention and Control

Dischargers who are not required to obtain an NPDES permit; but who handle, store, or use hazardous or toxic substances or discharges prohibited under Section 13.14.105.E General Discharge Prohibitions, on their sites; must prepare and submit to the Manager, at the Manager's request, an Accidental Spill Prevention Plan within 60 days of notification by the City. If other laws or regulations require an Accidental Spill Prevention and Control Plan, a plan that meets the requirement of those other laws and regulations will satisfy the requirement of this section.

F. Notification of Spills

As soon as any person in charge of a facility, or responsible for emergency response for a facility, becomes aware of any suspected, confirmed, or unconfirmed release of material, pollutants, or waste creating a risk of discharge to the public stormwater system, such persons must:

1. Begin containment procedures;
2. Notify proper emergency personnel in case of an emergency;
3. Notify appropriate City and/or State officials regarding the nature of spill;
4. Follow up with the City regarding compliance and modified practices to minimize future spills, as appropriate.

The notification requirements of this section are in addition to any other notification requirements set forth in federal, State, or local regulations and laws. The notification

requirements do not relieve the person of necessary remediation or enforcement action set forth in Section 13.14.115.

G. Stormwater Treatment

The quality of stormwater leaving the site after development must be equal to or better than the quality of stormwater leaving the site before development, based on the following criteria:

1. On-site mitigation facilities for water quality required for development must be designed, installed, and maintained in accordance with the Public Works Standards.
2. Land use activities of particular concern as pollution sources must implement additional best management practices for pollution control including, but not limited to, those best management practices specified in the Public Works Standards.
3. Development in a watershed that drains to streams with established total maximum daily load (TMDL) limitations; as provided under the Clean Water Act, Oregon Law, Administrative Rules, and other legal mechanisms; must assure that on-site mitigation facilities for water quality control meet the requirements for pollutants of concern.

H. Design and Performance Criteria for Stormwater Detention and Water Quality Treatment Facilities Constructed on Private Property

1. All on-site mitigation facilities; including stormwater detention, retention, and water quality treatment facilities required by the City; must be designed and constructed to meet the Public Works Standards.
2. Except as permitted by the Manager, as provided by the Public Works Standards, on-site mitigation facilities must be located on private property and may not be located on property that will become a public right-of-way, public stormwater easement, or future street plan.
3. Except as permitted by the Manager, as provided by the Public Works Standards, once constructed, the on-site mitigation facilities must be privately owned, operated, and maintained. Maintenance responsibility must include all elements of the stormwater detention and water quality treatment system up to the point of connection with a drainage structure or waterway of the public stormwater system. Such connection is subject to City approval.
4. Maintenance as required by the Public Works Standards must be specified in an

operation and maintenance plan submitted to and approved by the Manager prior to issuance of a notice to proceed with public improvements. Prior to the time of project acceptance, the developer or applicant must enter into an agreement with the City to ensure the implementation of the operation and maintenance plan, and a memorandum of agreement must be recorded with Clackamas County. Private stormwater detention and water quality treatment facilities are subject to periodic inspection by the City to ensure proper maintenance and performance.

5. Failure to properly operate or maintain on-site mitigation facilities for stormwater detention, retention, and water quality treatment according to the operation and maintenance plan of the adopted City of Portland Stormwater Management Manual in effect on the date of the ordinance codified in this chapter is a violation.

(Ord. 2013 § 1, 2010; Ord. 2025 § 3, 2011; Ord. 2036 § 3, 2011; Ord. 2223 § 1, 2022)

§ 13.14.030. REQUEST FOR SERVICE, INITIATION OF BILLING.

A request for water service constitutes a request for stormwater service and will initiate appropriate billing for stormwater services as established in this chapter. If development of a parcel does not require initiating water service, the creation of an improved premises from which stormwater may be discharged into the public stormwater system will constitute a request for service and initiate the obligation to pay the fees and charges authorized in this chapter.

(Ord. 1755 § 6, 1994; Ord. 2013 § 1, 2010; Ord. 2223 § 1, 2022)

§ 13.14.040. CHARGES FOR STORMWATER SERVICE.

A. Except as the charges may be reduced under subsection C of this section, the obligation to pay stormwater service charges arises whenever there is a request for stormwater service for an improved premises. Unless another person responsible has agreed in writing to pay and a copy of that writing is filed with the City, the person receiving the City's water utility charge bill must pay the stormwater charges as set by City Council resolution. If there is no water service to the property or if water service is discontinued and the property is an improved premises, the stormwater charges must be paid by the person responsible for the property.

The person required to pay the charge is hereafter referred to as the customer.

B. The City Council may by resolution establish fees and charges necessary to provide and operate a stormwater system and service.

C. Upon completion of the on-site mitigation credit application package available from the City's Public Works Department, a customer of the utility may request a reduction of the stormwater service charge. The service charge will be reduced in relation to the customer's ability to demonstrate that on-site stormwater facilities meet or exceed the City's standards for stormwater quantity and quality control at that site.

Any reduction given will continue until the condition of the property is changed or until the Manager determines the property no longer qualifies for the credit given. Upon change in the condition of the property, another application may be made by a person responsible.

D. Service charge avoidance may be requested through the application package available from the Public Works Department. The criteria for waiver of the service charge as it applies to a specific customer includes total retention of stormwater with no effective discharge to the City's stormwater system; the petitioner's ability to demonstrate through hydrologic/hydraulic analysis that the site receives no stormwater service from the City's stormwater system; and proof that stormwater facilities are constructed and maintained to City standards.

E. For the purposes of this chapter, dry wells are not an on-site mitigation control system eligible for service charge reduction or service charge avoidance because of the potential water quality impact that dry wells may have on the City's groundwater resources.

(Ord. 1755 § 6, 1994; Ord. 2013 § 1, 2010; Ord. 2223 § 1, 2022)

§ 13.14.050. STORMWATER CHARGES—BILLING.

- A. Charges for stormwater service supplied by the City to any customer will be charged for and billed to each such customer in accordance with rates established by the City Council. Prior to the establishment of stormwater service fees and charges by the City Council, the Milwaukie Citizens Utility Advisory Board will prepare and deliver a report and recommendation on rates to the City Council. The Committee must prepare and deliver its recommendation to City Council on an annual basis, according to the rules established by City Council. Stormwater service fees and charges as established by the City Council will be added to and made a part of the billings for water and sewer service.
- B. The customer is responsible for all stormwater service fees and charges, except as allowed by Section 13.14.040. The City may require deposits prior to providing stormwater service or in lieu of a deposit, obtain a signed agreement from the property owner, whether the customer or not, that they will be ultimately liable for the charges and that the City may use a lien as one method to secure payment if the charges are not paid. However, the City may not require a property owner to sign such an agreement.
- C. Billings may be prorated. The proration will be a daily rate determined by dividing the annual minimum billing by 365 days times the number of days of occupancy from last meter reading and/or billing date.
- D. A reduced stormwater service charge may be charged for customers who qualify as low income utility customers under the provisions of Chapter 13.20 of this code.
- E. All money collected through stormwater fees and charges will be deposited in the stormwater utility account as established and maintained by the City's Finance Director.
- F. Funds collected under this chapter will be used for the purpose of designing, acquiring, developing, constructing, maintaining, improving, and operating both manmade and nature-based stormwater systems.

(Ord. 1755 § 6, 1994; Ord. 2013 § 1, 2010; Ord. 2223 § 1, 2022)

§ 13.14.055. PUBLIC INVESTMENT OF STORMWATER FUNDS.

Funds collected under this chapter will not be used for maintaining, operating, or improving a stormwater system on private property, or to provide direct financial assistance for private tree removal except when:

- A. Providing non-federal grant match funding to projects that reduce or eliminate the risk of repetitive flood damage to buildings on private property insured by the National Flood Insurance Program; or
- B. The stormwater system is (or component thereof) demonstrated to the satisfaction of the Manager to provide a stormwater benefit that extends beyond the boundaries of the private property; or
- C. It can be demonstrated to the satisfaction of the Manager in consultation with the Urban Forester that a private tree provides a stormwater benefit that extends beyond the boundaries of the private property; or
- D. The stormwater system has been dedicated to the City and is within a public easement.
(Ord. 2223 § 1, 2022)

§ 13.14.060. STORMWATER CHARGES—WHEN DELINQUENT.

- A. The City will prepare and mail billings for stormwater fees and charges on the last business day of each month. Payment is due on the 15th of the month following the billing date. Accounts are delinquent if the City does not receive full payment by 5:00 p.m. on the last business day of the month immediately following the billing date.
- B. A delinquent fee, in an amount established by resolution of the City Council, will be added to all delinquent accounts.
- C. The Finance Director or designee is authorized to determine what constitutes a de minimis account balance and to waive the penalties in subsections B and D of this section in de minimis or extenuating circumstances.
- D. In addition to other lawful remedies, the Finance Director may enforce the collection of charges authorized by this chapter by withholding delivery of water to any premises where the stormwater service fees and charges are delinquent or unpaid, following the procedures and standards for shutting off water service for nonpayment of water bills as provided in

Chapter 13.04. However, the Finance Director may not deny or shut off water service to any subsequent tenant based upon an unpaid claim for services furnished to a previous tenant who has vacated the premises.

(Ord. 1755 § 6, 1994; Ord. 1895 § 4, 2001; Ord. 2013 § 1, 2010; Ord. 2223 § 1, 2022)

§ 13.14.070. DELINQUENT CHARGES—LIEN.

If the property owner elects pursuant to Section 13.14.050.B to authorize the use of a lien on real property to secure stormwater charge payment in lieu of a security deposit, all stormwater charges will be a lien against the premises served from and after the date of billing and entry on the ledger or other records of the City pertaining to its municipal stormwater system, and such ledger record or other record must be made accessible for inspection by anyone interested in ascertaining the amount of such charges against the property. Whenever a bill for stormwater service remains unpaid 60 days after it has been rendered, the lien thereby created may be foreclosed in the manner provided for by ORS 223.610 or in any other manner provided by law or City ordinance.

(Ord. 1755 § 6, 1994; Ord. 2013 § 1, 2010; Ord. 2223 § 1, 2022)

§ 13.14.080. APPEAL.

Any customer aggrieved by any decision made with regard to the customer's account or a decision on charge reduction or avoidance may appeal to the Manager by filing with the City a written request for review no later than 10 days after receiving the decision. The Manager's decision will be subject to review by the City Council upon filing of an appeal within 15 days of the notice of decision.

(Ord. 1755 § 6, 1994; Ord. 2013 § 1, 2010; Ord. 2223 § 1, 2022)

§ 13.14.090. RIGHT OF ACCESS.

Employees of the City must be provided access during regular business hours to all parts of the premises that include portions of the City's stormwater drainage system for the purpose of inspecting the condition of the pipes and fixtures and the manner in which the system is used. Should there be no one available on the premises, notice will be provided to the owner, tenant, occupant, or their agent that arrangements must be made to allow the inspection.

(Ord. 1755 § 6, 1994; Ord. 2013 § 1, 2010; Ord. 2223 § 1, 2022)

§ 13.14.100. TAMPERING WITH SYSTEM.

- A. No unauthorized person may damage, destroy, uncover, deface, or tamper with any conduit, structure, appurtenance, or equipment that is a part of the stormwater system.
- B. The Manager may adopt such rules and regulations as are necessary to protect the stormwater system and the public health, safety, and welfare. Violation of said rules or regulations is deemed a violation of this chapter and will be punished accordingly.
- C. Portions of Johnson Creek, Kellogg Creek, and their natural tributaries are within the boundaries of the city and are considered waters of the United States pursuant to the CWA.

In order to protect the waters the City has a comprehensive enforcement program to comply with:

1. The 1987 Amendments to the CWA, as implemented by the Environmental Protection Agency (EPA) NPDES regulations adopted November 16, 1990, make necessary the adoption of plans and programs for stormwater management meeting specified criteria.
2. Section 402(p) of the CWA (33 U.S.C. 1251 et seq.), as amended by the Water Quality Act of 1987, requires that municipalities must:
 - a. Prohibit nonstormwater discharge into the public stormwater system; and
 - b. Require controls to reduce the discharge of pollutants from stormwater to the maximum extent practicable.
3. Section 303(d) of the CWA requiring states and the EPA to identify certain substandard waters and to set total maximum daily loads (TMDLs). The Oregon Department of Environmental Quality has and will continue to establish TMDLs for some water bodies within the city. The City seeks to comply with all TMDL requirements.
4. The Endangered Species Act (ESA) and associated 4(d) rules covering protection of West Coast salmon and steelhead.
5. All provisions of the federal law by implementing a stormwater management plan, in conjunction with other co-permittees.
6. The Safe Drinking Water Act and Divisions 40 and 44 of Chapter 340 of the Oregon Administrative Rules pertaining to UIC facilities.
(Ord. 1755 § 6, 1994; Ord. 2013 § 1, 2010; Ord. 2223 § 1, 2022)

§ 13.14.105. DISCHARGE REGULATIONS.

A. Discharge of Pollutants

The commencement, conduct, or continuance of any nonstormwater discharge to the public stormwater system is prohibited and is a violation of this chapter, except as described below.

1. The prohibition does not apply to any nonstormwater discharge permitted or approved under an Industrial or Municipal NPDES permit, waiver, or discharge order issued to the discharger and administered by the DEQ, provided that the discharger is in full compliance with all requirements of the permit, waiver, or discharge order and other applicable laws or regulations and provided that written approval has been granted by the City for any discharge to the municipal separate storm wastewater system (MS4).
2. Except as provided in subsection A.3, the prohibition does not apply to the following non-stormwater discharges to the public stormwater system: uncontaminated water line flushing; landscape irrigation; diverted stream flows; uncontaminated groundwater infiltration (as defined in 40 CFR 35.2005(20)) to separate storm sewers; rising groundwaters; uncontaminated pumped groundwater; discharges from potable water sources (including potable groundwater monitoring wells and drainage and flushing of municipal potable water storage reservoirs), startup flushing of groundwater wells, foundation, footing and crawlspace drains (where flows are not contaminated), uncontaminated air conditioning or compressor condensate; irrigation water, springs, lawn watering, individual residential car washing, charity car washing (provided that steam and heat are not used, washing is restricted to the outside of the vehicle with no rinsing or washing of engines, transmissions, or undercarriages, and only phosphate-free

soaps/detergents are used); flows from riparian habitats and wetlands, dechlorinated swimming pool discharges, including hot tubs (heated water must cool for at least 12 hours prior to discharge and swimming pool and hot tub discharges with other pollutants such as bromine and copper may not be discharged to the MS4); street and pavement washwaters, including for bridges or pedestrian bridges (provided that chemicals, soaps, detergents, steam, or heated water are not used); routine external building wash-down (provided that chemicals, soaps, detergents, steam, or heated water are not used); and water associated with dye testing activity; .

3. The Manager may require best management practices to reduce pollutants, or may prohibit a specific discharger from engaging in a specific activity identified in subsection A.2, if at any time the Manager determines that the discharge is, was, or will be a significant source of pollution.

B. Discharge in Violation of Permit

Any discharge that would result in or contribute to a violation of an existing or future Municipal NPDES permit and any amendments, revisions, or reissuance thereof, either separately considered or when combined with other discharges, is a violation of this chapter and is prohibited. Liability for any such discharge is the responsibility of the person(s) causing or responsible for the discharge, and such persons must defend, indemnify, and hold harmless the City in any administrative or judicial enforcement action against the permit holder relating to such discharge.

C. Illicit Connections, Discharges, and Chronic Illicit Discharge

It is prohibited to establish, use, maintain, or continue illicit connections to the public stormwater system, or to commence or continue any illicit discharges to the public stormwater system.

D. Waste Disposal Prohibitions

1. No person may throw, deposit, leave, maintain, keep, or permit to be thrown, deposited, left, or maintained, in or upon any public or private property, driveway, parking area, street, alley, sidewalk, catch basin, inlet, or other component of the public stormwater system, materials that may cause or contribute to pollution, including, but not limited to, any refuse, rubbish, garbage, litter, yard debris, landscape materials, compost, topsoil, bark, gravel, sand, dirt, sod, sediment or sediment-laden runoff from construction or landscaping activities, hazardous materials, or other discarded or abandoned objects, articles, and accumulations.
2. Runoff from commercial or industrial operations or businesses that wash or detail vehicles, engines, transmissions, equipment, interior floors, or parking lots, may not discharge directly to a private or public stormwater system; this includes, but is not limited to, outdoor commercial, industrial, or business activities that create airborne particulate matter, process by-products or wastes, hazardous materials or fluids from stored vehicles, where runoff from these activities discharges directly or indirectly to a private or public stormwater system.

E. General Discharge Prohibitions

1. Discharge to Sanitary Sewer System

No person may discharge or contribute to the discharge of any stormwater or other unpolluted water into the City's sanitary sewer system.

2. Discharge to Public Storm Sewer System

It is unlawful to discharge or cause to be discharged directly or indirectly into the public stormwater system any of the following:

- a. Any discharge having a visible sheen, or containing floating solids or discoloration (including, but not limited to, dyes and inks);
- b. Any discharge having a pH of less than 6.5 or greater than 8.5 or that contains toxic substances;
- c. Any discharge that causes or may cause damage, interference, nuisance, or hazard to the public stormwater system or the City personnel;
- d. Any discharge containing human sanitary waste or animal feces.

(Ord. 2013 § 1, 2010; Ord. 2223 § 1, 2022)

§ 13.14.110. COMPLIANCE REQUIRED.

The provisions of this chapter must be strictly complied with in every instance, and service must be paid for by all premises supplied, according to the rates established by the City Council. Exceptions to these provisions may be made only upon the written authorization of the Manager. (Ord. 1755 § 6, 1994; Ord. 2013 § 1, 2010; Ord. 2223 § 1, 2022)

§ 13.14.115. INSPECTION AND ENFORCEMENT.

A. Authority to Inspect

1. Whenever necessary to make an inspection to enforce any of the provisions of this chapter, or whenever the Manager has reasonable cause to believe that there exists in any building or upon any premises any condition that may constitute a violation of the provisions of this chapter, the Manager may enter such building or premises at all reasonable times to inspect the same or perform any duty imposed upon the Manager by this chapter; provided that: (a) if such building or premises is occupied, he or she first must present proper credentials and request entry; and (b) if such building or premises is unoccupied, he or she must first make a reasonable effort to locate the owner or other persons having charge or control of the building or premises and request entry.
2. The property owner or occupant has the right to refuse entry but, in the event such entry is refused, the Manager is hereby empowered to seek assistance from any court of competent jurisdiction in obtaining such entry and performing such inspection.
3. As used in this section, inspection includes, but is not limited to, the physical inspection of a facility, and the review and copying of records relating to compliance with Sections 13.14.025 to 13.14.130.

B. Authority to Sample, Establish Sampling Devices, and Test

With the consent of the owner or occupant, or with court consent, the Manager may establish on any property such devices as are necessary to conduct sampling or metering operations. During all inspections as provided herein, the Manager may take any samples deemed necessary to aid in the pursuit of the inquiry or to record the on-site activities.

C. Enforcement Procedures

For any violation of MMC Chapter 13.14, the following enforcement procedures apply:

1. Notice of Violation

If the Manager determines that an applicant, other responsible party, or other person has failed to comply with MMC Chapter 13.14, the Manager must issue a written notice of violation to such person. The notice of violation must be served in person or by certified or registered mail, return receipt requested. The notice of violation must include:

- a. The name and address of the applicant or the responsible person;
- b. The address or other description of the site where the violation is occurring;
- c. A statement specifying the nature of the violation;
- d. A summary of potential remedial measures that may be necessary to bring the act or failure to act into compliance with Chapter 13.14;
- e. The date by which compliance is required, which must be within 10 days of issuance; or, if compliance is anticipated to take longer than 10 days due to technical, logistical, or other reasonable issues, require the applicant or other responsible party, within 10 days, to provide a written action plan for how compliance will be achieved and a timeline for compliance, which may not exceed 6 months without approval by the Department of Environmental Quality. The amount and type of pollution discharged will inform the date by which compliance is required;
- f. A statement of the penalties that may be assessed; and
- g. A statement of other enforcement action that may occur.

2. Stop Work Order

The Manager may order work to be stopped for any violation of Chapter 13.14 that arises from the work authorized under a permit. The stop work order must be posted on the property where the violation has occurred and will remain in effect until the remedial measures set forth in the Notice of Violation have been completed, or the violations have been otherwise cured. The stop work order may be withdrawn or modified by the Manager to enable the necessary remedial measures.

3. Chronic Illicit Discharge

Notwithstanding other provisions in this Section 13.14.115, the Manager may impose a civil penalty and pursue enforcement without having issued a notice of violation or making attempts to secure voluntary correction where the Manager determines that the violation was knowing, intentional, or a repeat of a similar violation.

4. Failure to Comply

In the event the applicant, responsible party, or other person fails to take the remedial measures set forth in the notice of violation, the Manager may issue a citation for each day the violation remains unremedied after the date set forth in the notice of violation, consistent with the procedures set forth in Chapter 1.08, Short-Form Uniform Complaint and Citation Method and Code Enforcement Procedures.

5. Rights, remedies, and penalties set forth in this Chapter 13.14 are cumulative, not mutually exclusive, and in addition to any other rights, remedies, and penalties available to the City under any other provision of law.

6. Additional Requirements

a. Requirement to Eliminate Illicit Connections

For an illicit connection to the public stormwater system, compliance requires eliminating the connection. Once the connection is eliminated, if the responsible person can demonstrate that an illicit discharge will no longer occur, that person may request approval to reconnect as provided in Section 13.14.030. The reconnection or reinstallation of the connection will be at the responsible person's expense.

b. Requirement to Monitor and Analyze

Whenever the Manager determines that any person is engaged in any activity, and/or owns or operates any facility, which may cause or contribute to stormwater pollution, illicit discharge, or chronic illicit discharge to the public stormwater system, the Manager may, by written notice, order that such person undertake such monitoring activities and/or analyses, and furnish such reports, as the Manager may deem necessary to demonstrate compliance with this chapter. The written notice must be served either in person or by certified or registered mail, return receipt requested, and must set forth the basis for such order and particularly describe the monitoring activities and/or analyses and reports required. The burden to be borne by the owner or operator; including costs of these activities, analyses, and reports; must bear a reasonable relationship to the need for the monitoring, analyses, and/or reports and the benefits to be obtained. The recipient of such order must undertake and provide the monitoring, analyses, and/or reports within the time frames set forth in the order.

(Ord. 2013 § 1, 2010; Ord. 2223 § 1, 2022)

§ 13.14.120. VIOLATIONS and PENALTY.

A. Continuing Violation

Unless otherwise provided, a person must be deemed guilty of a separate offense for each and every day during any portion of which a violation of this chapter is committed, continued, or permitted by the person.

B. Concealment

Causing, permitting, aiding, abetting, or concealing a violation of any provision of this chapter constitutes a violation of the chapter.

C. Acts Resulting in Violation of Federal Law

Any person who violates any provision of this chapter, or any provision of any stormwater-related permit issued by Department of Environmental Quality, or who discharges waste or wastewater that causes pollution, or who violates any cease and desist order, prohibition, or effluent limitation, also may be in violation of the Clean Water Act, Safe Drinking Water Act, or the Endangered Species Act and may be subject to the sanctions of these Acts including civil and criminal penalties.

D. Violations Deemed a Nuisance

Any condition caused or permitted to exist in violation of any provision of this chapter is a threat to public health and safety. Any such condition is unlawful and constitutes a nuisance, subject to the enforcement provisions in MMC 8.04.

E. Penalty

Violation of any provision of this chapter by any person, firm, or corporation is punishable by a fine of not more than \$1,000. Factors for determining the penalty amount may include, but are not limited to, the type, scale, and duration of the violation and whether the responsible party has been issued a notice of violation, citation, or otherwise held responsible for prior violations.

(Ord. 1755 § 6, 1994; Ord. 2013 § 1, 2010; Ord. 2223 § 1, 2022)

§ 13.14.130. DISCLAIMER OF LIABILITY.

The degree of protection required by this chapter is considered reasonable for regulatory purposes and is based on scientific, engineering, and other relevant technical considerations. The standards set forth herein are minimum standards and the chapter does not imply that compliance will insure that there will be no unauthorized discharge of pollutants into the public stormwater system. This chapter will not create liability on the part of the City, or any agent or employee thereof, for any damages that result from reliance on this chapter or any administrative decision lawfully made hereunder.

(Ord. 2013 § 1, 2010; Ord. 2223 § 1, 2022)

CHAPTER 16.28
EROSION CONTROL

Note: Prior ordinance history; Ord. 1718

§ 16.28.010. GENERAL POLICY.

- A. The policies of this chapter will apply during construction and until permanent measures are in place following construction as described herein, unless otherwise noted.
- B. Temporary and permanent measures for all construction projects will be required to lessen the adverse effects of erosion and sedimentation. The owner or his or her/her agent, contractor, or employee, must properly install, operate, and maintain both temporary and permanent works as provided in this section or in an approved plan, to protect the environment during the useful life of the project. These erosion control rules apply to all lands within the City of Milwaukie.
- C. Nothing in this chapter will relieve any person from the obligation to comply with the regulations or permits of any federal, State, or local authority.
- D. Maintenance and repair of existing facilities is the responsibility of the owner of record.
- E. Erosion, sedimentation, and other pollutants reaching the public storm and/or surface water system resulting from development, construction, grading, filling, excavating, clearing, and any other activity that accelerates erosion must be prevented.
- F. No visible or measurable erosion will leave the property during construction or during activity described in subsection E above. The owner of the property, together with any person who causes such action from which the visible or measurable erosion occurs, is responsible for clean up, fines, and damages. Clean up responsibilities include clean up of creeks, drainage ways, or wetlands impacted by a project. For the purposes of this chapter "visible and measurable erosion" includes, but is not limited to:
 - 1. Deposits of mud, dirt, sediment, or similar material exceeding one-half cubic foot in volume on public or private streets, adjacent property, or into the storm and surface water system, either by direct deposit, dropping, discharge, or as a result of the action of erosion;
 - 2. Evidence of concentrated flows of water over bare soils; turbid or sediment-laden flows; or evidence of on-site erosion such as rivulets or bare soil slopes, where the flow of water is not filtered or captured on the site, and/or;
 - 3. Earth slides, mud flows, earth sloughing, or other earth movement that results in material leaving the property.
- G. Dust and other particulate matters containing pollutants can settle on property and be carried to waters of the state though rainfall or other means. Dust must be minimized to the extent practicable, utilizing all measures necessary, including, but not limited to:

1. Sprinkling haul and access roads and other exposed dust-producing areas with water;
2. Establishing temporary vegetative cover;
3. Placing wood chips or other effective mulches on vehicle and pedestrian use areas;
4. Use of covered haul equipment; and/or
5. Prewetting cut and borrow area surfaces.

(Ord. 1899 § 1, 2002)

§ 16.28.020. EROSION CONTROL PERMIT AND EROSION CONTROL PLANS—APPLICABILITY—CONFORMANCE.

A. Definitions.

"Erosion control permit" means the official approval issued by the City that demonstrates compliance with this chapter for activities described in the application form, erosion control plan, and related materials submitted pursuant to this chapter.

"Erosion control plan" means all documents, maps, plans and other information specified in Section 16.28.030 and submitted in association with an application for an erosion control permit.

"Manager" means the City Manager or designee.

B. An erosion control plan that meets the requirements of Section 16.28.030 is required prior to any approval of an erosion control permit.

C. An erosion control permit is required as follows:

1. Prior to placement of fill, site clearing, or land disturbances, including but not limited to grubbing, clearing or removal of ground vegetation, grading, excavation, or other activities, any of which results in the disturbance or exposure of soils exceeding 500 square feet.
2. For disturbed areas or exposed soils less than 500 square feet, where the City has determined that site conditions may result in visible and measurable erosion and where the City has provided written notice of the requirement to obtain an erosion control permit to the property owner. Upon notice by the City, all work must cease pending approval of an erosion control permit and installation of approved erosion control measures.
3. For any lot that includes natural resources regulated by Milwaukie Zoning Ordinance Section 19.402 Natural Resources, an erosion control permit will be required prior to placement of fill, site clearing, or land disturbances, including but not limited to grubbing, clearing or removal of ground vegetation, grading, excavation, or other activities, any of which has the potential for, or results in visible and measurable erosion, regardless of the area of disturbance.

D. An erosion control permit will not be issued for activities on lots that include natural resources regulated by Section 19.402, where the site activity has not been authorized, or is not exempt under the provisions of Milwaukie Zoning Ordinance Section 19.402 Natural

Resources as determined by the Planning Director. This provision does not apply where the erosion control permit is associated with correction of a violation of the City Code or as necessary for public safety, or the protection of property or water quality.

E. Timing

Approval of the erosion control permit is required prior to the following, whichever comes first:

1. Issuance of grading permits, building permits, and approval of construction plans for subdivision; or
2. Placement of fill, site clearing, land disturbances, including but not limited to grubbing, clearing or removal of ground vegetation, grading, excavation, or other activities, any of which disturbs or exposes soil.

F. Erosion control measures set forth in any approved erosion control plan must be implemented and maintained on the site until the date set forth in the plan, or the amended date as necessary for the establishment of final landscaping. The City may allow for the removal of erosion control measures at an earlier date if erosion control is assured by established landscaping.

(Ord. 1899 § 1, 2002; Ord. 2036 § 3, 2011)

§ 16.28.030. CONTENTS OF EROSION CONTROL PLAN AND GENERAL REQUIREMENTS.

A. Erosion control plans must include a description of erosion control methods that are adequate to ensure that runoff siltation and pollutants from the grading, site clearing, or construction are contained onsite during the period of activity on the site until the final landscaping is sufficiently established to control erosion. Each plan must contain a date that is the estimated ending date for maintaining erosion control measures. That date may be extended if final landscaping has not been sufficiently established to control erosion. Plan submittal requirements, and recommended erosion control measures, are included in the Clackamas County/City of Milwaukie Technical Guidance Handbook for Erosion/ Sedimentation Control Plans (August 1991) (Guidance Handbook), which is hereby adopted in total as part of this chapter. Copies of the Guidance Handbook are available for a fee at the City Public Works Department.

B. At a minimum the Erosion Control Plan must include:

1. Identification of potential sources of stormwater pollution at the construction site
2. The stormwater controls to prevent erosion and pollution created from the development both during and after construction (site-specific considerations must be incorporated);
3. Limits of clearing by flagging boundaries in the field before starting site grading or construction (staging areas must be included);
4. An analysis of source controls such as detention and storage techniques during construction showing existing contours as an alternative method to control erosion from stormwater runoff;

5. A drainage plan during construction;
 6. Existing contours as well as all sensitive areas, creeks, streams, wetlands, open areas, and areas of natural riparian vegetation pursuant to Chapter 322; and
 7. A description of historic localized flooding problems resulting from surface water runoff, FEMA, or flooding problems known to the community or the local jurisdiction.
- C. A site plan prepared by an Oregon registered engineer is required for sites with disturbed area of 5 acres or greater.
- D. The Erosion Control Plan must be kept on site and made available during site inspections or upon request.
- E. Erosion Control Plans must be maintained and updated as site conditions change or as directed by the City.
- F. Additional measures required by subsection C above may include 1 or more of the following:
1. Limited area cleared at any one time;
 2. Additional drainage requirements during construction;
 3. Filtering or treatment of runoff;
 4. Additional water quality measures;
 5. Additional erosion control to cover portions of the site;
 6. Maintaining some existing vegetation adjacent to water features, such as creeks, streams, and wetlands or areas of natural riparian vegetation pursuant to Chapter 322;
 7. Additional facilities to reduce volume and velocity of water runoff;
 8. If there are no workable alternatives, limit clearing, and grading in some areas between November 1st and April 30th; and
 9. Additional measures required by the Guidance Handbook.
- G. All construction activities disturbing 5 or more acres must obtain an NPDES erosion control permit for construction activities issued by the City of Milwaukie.
(Ord. 1899 § 1, 2002)

§ 16.28.040. APPROVAL PROCESS—FEES.

Fees to cover the cost of erosion control plan review, site inspections, and the Clackamas County/City of Milwaukie Technical Guidance Handbook for Erosion/Sedimentation Control Plans (August 1991) will be set by City Council resolution.
(Ord. 1899 § 1, 2002)

§ 16.28.050. MAINTENANCE AND AMENDMENT OF INADEQUATE MEASURES.

The applicant must maintain all facilities required by an approved erosion control plan so as to assure their continued effectiveness during construction or other permitted activity. If the facilities and techniques approved in an erosion control plan are not effective or sufficient as determined by

the City's Site Inspector, the permittee must submit a revised plan within 3 working days of written notification by the City. In cases where erosion is occurring, the City may require the applicant to implement interim control measures prior to submittal of a revised erosion control plan and without limiting the City's right to undertake enforcement measures. Upon approval of the revised plan by the City, the permittee must immediately implement the revised plan.

(Ord. 1899 § 1, 2002)

§ 16.28.060. WORK IN PROGRESS.

Permittees or property owners for any site activities that were underway on the effective date of the ordinance codified in this chapter, may be required to prepare an erosion control plan for approval pursuant to this chapter. If the City determines that an erosion control problem exists, and requests an erosion control plan, ground work on the site must cease pending approval of the plan and installation of approved erosion control measures. The provisions of this section apply only until final landscaping on the site is sufficiently established to control erosion.

(Ord. 1899 § 1, 2002)

§ 16.28.070. PERFORMANCE.

The City may require the applicant to submit a bond, cashier's check, or irrevocable letter of credit from an acceptable financial institution to secure performance of the requirements of this chapter. Upon default, the City may perform work or remedy violations and draw upon the bond or fund. If the City does not require a bond and the developer does not perform the erosion control plan in whole or in part, the City may, but is not obligated to, perform or cause to be performed corrective work and charge the developer. Such amount will bear interest at 9% per annum and be a lien upon the property foreclosable in accordance with ORS Chapter 88.

(Ord. 1899 § 1, 2002)

§ 16.28.080. EROSION CONTROL CERTIFICATION.

A. Developers/contractors of building activities requiring erosion control permits who have a certified individual on staff with authority over erosion control and who is responsible for erosion control of the site, are eligible for a discount of their erosion control fees in accordance with the City fee schedule. On large or complex sites, the City may require an individual certified in erosion control to be on site at all times. Violations of this title that result in enforcement procedures described in Section 16.28.110, will result in revocation of the certification and require payment of the full erosion control fee. Recertification is required following erosion control violations resulting in enforcement actions. If certification is revoked, there may be additional inspection fees.

B. Certification must involve training in erosion control techniques, issues, and implementation strategies. A minimum of 4 hours of classroom instruction is required every 2 years.

(Ord. 1899 § 1, 2002)

§ 16.28.090. INSPECTION.

The erosion control measures must be installed by the owner or his or her representative and must be inspected by the City prior to the start of any excavation work.

(Ord. 1899 § 1, 2002)

§ 16.28.100. DEPOSIT OF SEDIMENT.

No person will drag, drop, track, or otherwise place or deposit, or permit to be deposited, mud, dirt, rock, or other such debris upon a public street or into any part of the public storm and surface water system, including natural drainage systems, or any part of a private storm and surface water system that drains or connects to the public storm and surface water system, with the exception of sanding for ice and snow and maintenance such as crack or chip sealing. Any such deposit of material must be immediately removed using hand labor or mechanical means. No material will be washed or flushed into the road/street or any part of the storm or surface water system without erosion control measures installed to the satisfaction of the City, and any such action will be an additional violation.

(Ord. 1899 § 1, 2002)

§ 16.28.110. ENFORCEMENT—VIOLATION—PENALTY.

A. Enforcement Procedures

For any violation of MMC Chapter 16.28, the following enforcement procedures apply:

1. Notice of Violation

If the Manager determines that an applicant, other responsible party, or other person has failed to comply with MMC Chapter 16.28, the Manager must issue a written notice of violation to such person. The notice of violation must be served in person or by certified or registered mail, return receipt requested. The notice of violation must include:

- a. The name and address of the applicant or the responsible person;
- b. The address or other description of the site where the violation is occurring;
- c. A statement specifying the nature of the violation;
- d. A summary of potential remedial measures that may be necessary to bring the act or failure to act into compliance with Chapter 16.28;
- e. The date by which compliance is required, which must be within 10 days of issuance; or, if compliance is anticipated to take longer than 10 days due to technical, logistical, or other reasonable issues, require the applicant or other responsible party, within 10 days, to provide a written action plan for how compliance will be achieved and a timeline for compliance, which may not exceed 6 months without approval by the Department of Environmental Quality. The type and severity of pollution discharged will inform the date by which compliance is required;
- f. A statement of the penalties that may be assessed; and
- g. A statement of other enforcement action that may occur.

2. Stop Work Order

The Manager may order work to be stopped for any violation of Chapter 16.28 that arises from the work authorized under a permit. The stop work order must be posted on the property where the violation has occurred and will remain in effect until the remedial measures set forth in the Notice of Violation have been completed, or the violations have been otherwise cured. The stop work order may be withdrawn or modified by the Manager to enable the necessary remedial measures.

3. Repeat or Ongoing Violations

Notwithstanding other provisions in this Section 16.28.110, the Manager may impose a civil penalty and pursue enforcement without having issued a notice of violation or making attempts to secure voluntary correction where the Manager determines that the violation was knowing, intentional, or a repeat of a similar violation.

4. Failure to Comply

In the event the applicant, responsible party, or other person fails to take the remedial measures set forth in the notice of violation, the Manager may issue a citation for each day the violation remains unremedied after the date set forth in the notice of violation, consistent with the procedures set forth in Chapter 1.08, Short-Form Uniform Complaint and Citation Method and Code Enforcement Procedures.

5. Rights, remedies, and penalties set forth in this Chapter 16.28 are cumulative, not mutually exclusive, and in addition to any other rights, remedies, and penalties available to the City under any other provision of law.

(Ord. 1899 § 1, 2002)

16.28.120 Violations and Penalty

A. Continuing Violation

Unless otherwise provided, a person must be deemed guilty of a separate offense for each and every day during any portion of which a violation of this chapter is committed, continued, or permitted by the person.

B. Violations Deemed a Nuisance

Any condition caused or permitted to exist in violation of any provision of this chapter is a threat to public health and safety. Any such condition is unlawful and constitutes a nuisance, subject to the enforcement provisions in MMC 8.04.070.

C. Penalty

Violation of any provision of this chapter by any person, firm, or corporation is punishable by a fine of not more than \$1,000. Factors for determining the penalty amount may include, but are not limited to, the type, scale, and duration of the violation and whether the responsible party has been issued a notice of violation, citation, or otherwise held responsible for prior violations.